

Charting A Path Forward:
Report of the Independent Review of the
Accessibility for Ontarians with Disabilities Act, 2005

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Introduction

Preamble

In June 2009, I was appointed by the Ontario government to conduct an independent review of the Accessibility for Ontarians with Disabilities Act, 2005 (AODA). The subject matter of this review is vitally important to the people of Ontario because accessibility for persons with disabilities strengthens our society, our economy and our quality of life.

The purpose of this groundbreaking legislation is to make Ontario accessible to persons with disabilities by developing, implementing and enforcing standards with respect to goods, services, facilities, accommodation, employment, buildings, structures and premises. The standards will break down barriers in key areas of daily living. Improvements will be phased in, with reviews every five years, moving toward an accessible Ontario by 2025. Standards are to be developed with the involvement of persons with disabilities, the Ontario government, the broader public sector and the private and not-for-profit sectors.

Under section 41 of the AODA, a comprehensive review is mandatory within four years after the act takes effect. The person conducting the review is to report on the findings and may make recommendations for improving the effectiveness of the act and regulations. The review must include consultation with the public and, in particular, persons with disabilities.

Why Accessibility Matters

Equality and Participation

First, what is at stake is a question of our fundamental values as a society. The rights of persons with disabilities are protected under both the Canadian Charter of Rights and Freedoms and Ontario's Human Rights Code. As the Minister of Citizenship and Immigration who introduced the AODA in the legislature said in 2004, "We all agree that discrimination against people with disabilities is wrong; accessibility for people with disabilities is right."¹ More recently, the United Nations Convention on the Rights of Persons with Disabilities has been tabled in the House of Commons.

Accessibility turns legal rights into practical, everyday realities. The goal behind the AODA is to create an inclusive society where everyone can participate to their full potential. Ontario as a whole will benefit from providing full accessibility for persons with disabilities. As accessibility increases, Ontarians with disabilities will bring their talents to bear more effectively in the

¹ Hansard, November 18, 2004

workplace and in all other aspects of Ontario life. Youth with disabilities will have more opportunity for educational achievement and seniors will live more fulfilling lives. Consumer spending by persons with disabilities will rise. And our quality of life will be enriched by the fuller inclusion of Ontarians with disabilities in our social relationships and community activities. Most important, the realization of accessibility will demonstrate our shared commitment to each other – and reinforce the values of decency, fairness and respect for individual dignity that bind Ontarians together.

Changing Perceptions

Society's perceptions of disability are changing and persons with disabilities are now seen to include a larger population.

For a long time, the popular image of disability centred on physical conditions. But more recently a wider view has gained ground, and sensory, developmental, mental health, learning and other non-evident — or “invisible” — disabilities are also better understood and more widely recognized. The definition of disability under the AODA is inclusive and reflects this broader view.

Along similar lines, the disability community was once thought of as a relatively small group of people who were disabled from birth or as the result of serious, accidental injuries. It remains true that a large majority of disabilities have their onset during the prime working years of 18 to 54 and are the result of external trauma. In the younger and older age groups, however, underlying disease and illness account for most disabilities.² As the incidence of disability rises with the growth in the older population, disability is more widely perceived as a product of the aging process and the result of chronic disease.

More than 1.85 million Ontarians or 15.5 per cent of the population³ have a disability and this number is quickly rising as society ages. By 2017, for the first time, Ontarians aged 65 and over will account for a larger share of the population than children under 14.⁴

Examples of the link between aging and disability include survivors of strokes or heart attacks who may face limits on their functioning, and seniors who have trouble with vision or hearing. While average life expectancy in Ontario is just under 80 years, disability-free life expectancy is only 68 years.⁵

Moreover, as Ontario's Lieutenant Governor, the Honourable David Onley, has pointed out, the number of Ontarians affected by disability grows to 53 per cent of the population when immediate family members are included. “As caregivers and supporters, they also experience

² Toronto Rehabilitation Institute. Submission to the Commission on the Future of Health Care in Canada, January 14, 2002, p. 13.

³ Statistics Canada, Participation and Activity Limitation Survey, 2006.

⁴ Ontario Population Projections 2008-2036, Fall 2009 Ministry of Finance Report.

⁵ Statistics Canada – Catalogue no. 82-221, Vol. 2005 No. 1; Vol. 2002 No. 1.

the reality of disability," the Lieutenant Governor has noted. "It is a group that is projected to grow, as Ontario's population ages. It is also a group that any one of us may become a member of as a result of illness, accident or age-related causes."⁶

From an economic perspective, a population of this size has a substantial impact. This is another area where perceptions are changing. Ontario businesses increasingly understand the potential of the disability market. People with disabilities already have an estimated spending power of \$25 billion a year across the country and Canadians with disabilities influence the spending decisions of about 12 to 15 million other consumers.⁷

Changing attitudes and the changing legal framework have led to advances in accessibility in recent years. Such measures as wheelchair ramps, reserved parking spaces, special education programs and close-captioned broadcasts are now more commonplace. But much remains to be done to remove and prevent barriers for people with disabilities – and the goal of the AODA is to make this happen.

The Structure of the Report

This report is organized into four sections:

- First, to set the stage, the **Introduction** outlines the evolution of accessibility legislation in Ontario and presents a snapshot of the current status of the implementation of the AODA. This section also outlines the terms of reference and the consultation process for the review. Since this is the first legislative review under the AODA, some of the broader historical and legal background on accessibility in Ontario has been included.
- Second, the section on **What the Review Heard** presents a detailed summary of the extensive input the review received from both organizations and individuals, arranged by themes and issues.
- Third, in **The Reviewer's Perspective**, I set out a series of issues and observations that have shaped my approach to the review.
- The final section presents my **Findings and Recommendations**.

⁶ Media Statement by the Honourable David C. Onley, Lieutenant Governor of Ontario, for December 3, 2009 - International Day of Persons with Disabilities.

⁷ Wilkerson, Bill. Business Case for Accessibility: How Accessibility Awareness Strengthens your Company's Bottom Line 2001 P. 5.

Historical Background

The AODA is the latest in a series of public policy initiatives to protect people with disabilities from discrimination and remove barriers to their full participation in society. These initiatives were driven by persons with disabilities and the organizations that represent them.

Charter of Rights and Freedoms and Ontario Human Rights Code

The inclusion of persons with disabilities in the equality rights section of the Charter of Rights and Freedoms, enacted in 1982 and effective in 1985, came about after lobbying by disability organizations. Many Ontarians with disabilities took part in this campaign. The Charter guarantees persons with disabilities equal protection and equal benefit of the law. In 1982 Ontario added handicap to the prohibited grounds for discrimination in the Human Rights Code, which applies to the public, not-for-profit and private sectors. Ontarians with disabilities strongly advocated for this measure. The term "handicap" was changed to "disability" in 2002. Under the code, every person has a right to equal treatment without discrimination because of disability, with respect to services, goods, facilities, housing, employment, contracts and membership in trade unions, occupational associations and self-governing professions. The code requires employers, landlords and providers of goods, services and facilities to accommodate the needs of people with disabilities, unless doing so would cause undue hardship.

Building Code and Other Measures

Since 1975, the Ontario Building Code — a provincial government regulation — has advanced one aspect of accessibility by setting requirements for buildings. Recently improved⁸, these provisions cover: entrances, such as ramps and width of doors; the path of travel, such as width of halls, floor areas and lighting; washrooms; signs; emergency exits; passenger loading zones; and parking.

Accessibility requirements under the Building Code apply to new buildings, including apartment, condominium, commercial and public buildings, and to some renovations. Houses are not covered, and owners and operators are not obliged to retrofit their buildings to meet current code requirements.

Other provisions to ensure equal treatment without discrimination for persons with disabilities are contained in such measures as the Blind Persons' Rights Act, the Education Act, the Planning Act and the regulations under the Highway Traffic Act.

⁸ The 2006 Building Code includes new requirements for public corridors wide enough for modern wheelchairs and tactile signs to help people with visual impairments navigate through buildings. In addition, 10 per cent of the units in a new apartment building or hotel must include accessible features.

Origins of the Ontarians with Disabilities Act

It soon became apparent that the Charter and the Human Rights Code were not enough to remove and prevent the array of barriers that keep people with disabilities from participating in significant areas of life – such as jobs, education, access to information, public transportation, and the use of goods, services and facilities. Under these laws, it is largely up to persons with disabilities to enforce their own rights on a case by case basis. Change depends on costly, cumbersome and lengthy legal battles. Moreover, while imposing a duty to accommodate to the point of undue hardship, the code provides little direction to employers, educators, landlords, retailers and others on how to comply.

In fall 1994, a coalition of Ontarians with disabilities and community organizations formed a committee for the purpose of securing the passage of a new Ontario law to identify, remove and prevent barriers to full participation. During the 1995 election campaign, the Ontarians with Disabilities Act Committee asked all three parties to pass this kind of act. The Progressive Conservative Party made a commitment to the ODA Committee to do so, if elected.

Following the election, the ODA Committee outlined a series of principles that the new legislation should embody. In October 1998, the legislature unanimously adopted a private member's resolution calling on the government to bring in disability legislation based on the ODA Committee principles. The government tabled a bill the next month but it did not complete the legislative process. A new bill was brought forward after the 1999 election. The Ontarians with Disabilities Act, 2001 (ODA) was introduced and passed in December 2001.

Accessibility Bill Enacted

During the 2003 election campaign, the then Leader of the Opposition wrote to the ODA Committee promising to enact a stronger and more effective Ontarians with Disabilities Act. Shortly after the election, the new government began this work by conducting a series of roundtable meetings and regional public meetings. Held in early 2004, these sessions included representatives of obligated organizations – that is, those with obligations under the ODA – as well as representatives from disability groups and the private sector.

In October 2004, the government introduced the Accessibility for Ontarians with Disabilities Act (AODA). In considering the bill, a legislative committee held public hearings across Ontario in early 2005. Based on this input, the committee adopted a series of amendments to the bill. For example, to strengthen the government's accountability for results, a requirement was added for a comprehensive review of the Act's effectiveness after four years, with further reviews every three years.

The final version of the bill was passed by the legislature unanimously in May 2005. It received Royal Assent and took effect on June 13, 2005.

Although the AODA provides for repeal of the ODA on a date to be proclaimed, this has not been done and the ODA remains in force.

The ODA Committee, the driving force behind the creation of the AODA, has now been succeeded by the Accessibility for Ontarians with Disabilities Act Alliance. This is a coalition of disability consumer advocacy groups that is monitoring the implementation of the legislation.

Ontario's Current Legislative Framework

Ontarians with Disabilities Act, 2001

The purpose of the ODA as stated in section 1 is: "to improve opportunities for persons with disabilities and to provide for their involvement in the identification, removal and prevention of barriers to their full participation in the life of the province."

The ODA requires provincial government ministries and broader public sector organizations – including municipalities, public transportation organizations, hospitals, school boards, universities and colleges of applied arts and technology – to prepare annual accessibility plans. These plans address the identification, removal and prevention of barriers to persons with disabilities in statutes and regulations, in the case of a ministry, or in by-laws, in the case of a broader public sector organization – as well as in policies, programs, practices and services. Each annual plan reports on what has already been done and the actions that are to be taken in the coming year. In preparing an accessibility plan, each ministry must consult with the Accessibility Directorate of Ontario (see below). The plans must be made available to the public.⁹

Under the act a municipality with a population of 10,000 or more must have an accessibility advisory committee with persons with disabilities comprising a majority of members, and smaller municipalities may have such a committee. These committees advise municipal councils on the preparation, implementation and effectiveness of each year's plan. Where no committee exists, the council is required to consult with persons with disabilities in preparing the plan.¹⁰ Broader public sector organizations must also consult with persons with disabilities and others in preparing their plans.¹¹

⁹ Sections 10, 11, 14 & 15 of the ODA.

¹⁰ Sections 11 and 12 of the ODA.

¹¹ Sections 14 and 15 of the ODA.

In addition to annual planning, the ODA requires the Ontario government:

- In consultation with persons with disabilities and others, to develop and comply with barrier-free design guidelines in leasing, purchasing, constructing or significantly renovating buildings, structures or premises
- When procuring goods and services for its own use or for employees or the public, to have regard to the accessibility of the goods or services to people with disabilities
- To provide Internet sites in a format that is accessible to people with disabilities unless it is not technically feasible to do so
- On request, to provide Government of Ontario publications in an accessible format, unless it is not technically feasible to do so
- To accommodate the accessibility needs of its employees and those of applicants for employment
- To ensure that projects relating to existing or proposed buildings, structures or premises meet accessibility requirements in order to receive funding under a government-funded capital program.¹²

Apart from accessibility planning, municipalities are required to:

- Have regard to accessibility for persons with disabilities when procuring goods and services
- Seek advice from the municipal accessibility advisory committee when leasing, purchasing, constructing or significantly renovating buildings, structures or premises
- Supply the advisory committee with site plans and drawings for review as part of the site plan control process, under which municipalities can consider the accessibility of proposed developments and ask for changes if necessary.¹³

The ODA also amended the Planning Act, which guides land use planning in Ontario communities. Accessibility for persons with disabilities was added to the matters of provincial interest that a municipality must have regard to in carrying out responsibilities under the Act. The amendments also require municipalities to consider accessibility when reviewing plans for new subdivisions.

As well, the ODA established the Accessibility Directorate of Ontario to:

- Conduct research and develop and conduct programs of public education on the purpose and implementation of the Act
- Consult with obligated organizations on accessibility planning and request and review their plans

¹² Sections 4 to 9 of the ODA.

¹³ Sections 11 and 12 of the ODA.

- Recommend changes to laws, regulations, programs and policies to improve opportunities for persons with disabilities.¹⁴

The ODA contains a section making it an offence to contravene the act and setting a maximum fine of up to \$50,000 for an organization convicted of a contravention. These provisions were never proclaimed.¹⁵

Accessibility for Ontarians with Disabilities Act, 2005

The Accessibility for Ontarians with Disabilities Act, 2005 begins by recognizing the history of discrimination against persons with disabilities in Ontario. It declares that its purpose is to benefit all Ontarians by developing, implementing and enforcing accessibility standards and by involving persons with disabilities, government, industries and sectors in developing those standards. The goal of the standards is to achieve accessibility for people with disabilities with respect to goods, services, facilities, accommodation, employment, buildings, structures and premises by 2025.¹⁶

The AODA adopts a broad definition of disability – the same as in the Human Rights Code and the ODA – encompassing physical, developmental, mental health and learning disabilities. It applies to the provincial government, the broader public sector and the private and not-for-profit sectors in Ontario (the obligated sectors). Standards are to be adopted as regulations setting out requirements for identifying, removing and preventing barriers.¹⁷ These obligations are to be phased, in stages of five years or less.¹⁸ Compliance is mandatory for the persons and organizations covered by a standard.

Standards Development Process

Standards development committees are responsible for developing proposed standards to be submitted to the government for approval as regulations. The committees must include persons with disabilities or their representatives; representatives of the industries, sectors or classes of organizations to which the standard will apply; representatives of affected government ministries; and possibly others. The minister draws up the terms of reference and invites people to sit on each committee.¹⁹

Each standards development committee is responsible for determining the long-term accessibility objectives for the industry, sector or class to be covered by the standard, indicating the requirements to make Ontario accessible by 2025. Each committee also has to decide the

¹⁴ Section 20 of the ODA.

¹⁵ Sections 21 of the ODA.

¹⁶ Section 1 of the ODA.

¹⁷ Section 6 of the ODA.

¹⁸ Section 9(4) of the ODA.

¹⁹ Section 8 of the ODA.

timeframe for implementation of the requirements, setting target dates for progress in stages of no more than five years. In determining timelines, a committee can consider economic, technical and other factors.²⁰

Once an initial proposed standard has been prepared, the standards development committee submits it to the minister who then releases it for public review. The committee considers the comments received, makes any changes it feels advisable and submits the final proposed standard to the minister. The minister then decides whether to recommend that the government adopt the proposed standard as a regulation in whole, in part or with changes.²¹

Successive Proposed Standards

The legislation provides for standards to be revisited after five years or sooner if the minister so decides. At that time, a standards development committee responsible for the industry, sector or class covered must re-examine the long-term accessibility objectives. If necessary, the committee will revise the requirements to be implemented by 2025 and the timeframe for implementation. The committee then develops another proposed standard containing whatever additions or modifications to the original standard are considered advisable. The proposed new standard goes through public review, revision based on comments received, and submission to the minister for possible adoption as a regulation. The standards are required to be reviewed again every five years using the same process.²²

Compliance and Enforcement

Everyone to whom an accessibility standard applies must comply within the time period set out in the standard and must file an accessibility report confirming compliance when required to do so.²³ Individuals or organizations can be exempted from reporting requirements by regulation. The minister is authorized to enter into incentive agreements to encourage persons or organizations to exceed the accessibility requirements in standards.²⁴

The AODA establishes an enforcement regime including inspections, orders, administrative penalties, appeals to a tribunal and ultimately substantial fines for non-compliance with accessibility standards or other regulations.²⁵

Municipal Committees

The AODA maintains the ODA's requirement for municipalities with a population of 10,000 or more to have an accessibility advisory committee, and like the ODA permits smaller municipalities to have one. Under the AODA the committees are given the new role of advising on the requirements and implementation of accessibility standards and the preparation of accessibility reports.

²⁰ Section 9 of the ODA.

²¹ Section 9 of the ODA.

²² Section 9(9)(a) to (d) of the AODA.

²³ Sections 13 and 14 of the AODA.

²⁴ Section 33 of the AODA.

²⁵ Sections 18 to 28 and sections 36 to 37 of the AODA.

The AODA continues two other committee functions established by the ODA: advising on accessibility when a municipality leases, purchases, constructs or significantly renovates buildings, structures or premises; and reviewing site plans and drawings for proposed developments.²⁶

Accessibility Directorate of Ontario

The AODA continues the Accessibility Directorate of Ontario. The directorate maintains its public education function, now with a focus on the purpose and implementation of the AODA, and adds related roles to:

- Consult with all levels of the education system – including schools, colleges, universities, trade or occupational associations and self-governing professions – to build accessibility into the educational experience and
- Inform organizations that may eventually be subject to an accessibility standard of steps they could take in advance to improve accessibility for people with disabilities,

The directorate is also responsible for consulting with people and organizations having obligations under the act on how to complete their accessibility reports and how to follow the standards. Other duties include advising the minister on the creation and composition of standards development committees, on the overall standards development process and on the form and content of accessibility reports. As well, the ADO is to prepare training material and reference material for members of standards development committees.²⁷

Advisory Council

The AODA creates an Accessibility Standards Advisory Council to advise the minister on the progress made by standards development committees, public information programs and other matters at the direction of the minister. A majority of its members must be persons with disabilities.²⁸

Repeal of ODA

The AODA provides for repeal of the ODA on a date to be named by proclamation.²⁹ Since this has not been done, the ODA remains in effect.

Broader Legal Developments

The legal environment surrounding accessibility continues to evolve. Two significant developments in particular bear watching.

²⁶ Section 29 of the AODA.

²⁷ Section 32 of the AODA.

²⁸ Section 31 of the AODA.

²⁹ Section 42 of the AODA.

The Government of Canada has tabled the Convention on the Rights of Persons with Disabilities adopted by the United Nations General Assembly in December 2006 and it is expected to be ratified soon. The convention provides that states should enact laws and other measures to improve disability rights, and also abolish legislation, customs and practices that discriminate against persons with disabilities. Among other obligations, states that ratify the convention undertake to promote universal design in the development of standards and guidelines, as well as research on and the use of universally designed goods, services, equipment and facilities. "Universal design" refers to the design of products, environments, programs and services to be usable by all people, to the greatest extent possible, without the need for adaptation.

At the provincial level, in summer 2009, the Law Commission of Ontario launched a project on the laws as they affect persons with disabilities.

Where We Are Now

Five Committees Established

Responsibility for the AODA was transferred from the Minister of Citizenship and Immigration to the Minister of Community and Social Services in late June 2005, shortly after the legislation was passed.

Since then, the minister has created standards development committees to develop standards in five areas:

- The customer service committee, established in January 2006, was the first to complete its work. The Accessibility Standards for Customer Service were established in regulation on January 1, 2008 and came into force for the provincial government and the broader public sector on January 1, 2010. The regulation will apply to the private and not-for-profit sectors on January 1, 2012.
- The transportation committee also began meeting in early 2006. Its initial proposed standard was released for public review in June 2007. The committee revised the initial draft to reflect public input and then sent the final proposed standard to the minister in November 2008.
- The information and communications committee started its work in spring 2007. It developed an initial proposed standard that went through public review from November 2008 to February 2009. The committee made revisions and submitted its final proposed standard to the minister in June 2009.
- The employment committee began meeting in fall 2007. It prepared an initial proposed standard that was posted for public review from February to May 2009. After considering the feedback, the committee submitted its final proposed standard to the minister in September 2009.

- The built environment committee also started work in fall 2007. It developed an initial proposed standard that underwent public review from July to October 2009. The committee will reconvene to consider the feedback in spring 2010.

The terms of reference for the standards development committees established to date provide for each committee to disband following the minister's decision on whether to recommend adoption of a proposed standard as a regulation. As a result, new committees must be created to conduct the five-year reviews of standards under the legislation.

Changes to the Standards Development Process

Changes were made to the standards development process as the result of a letter from the Premier to the Accessibility for Ontarians with Disabilities Act Alliance in September 2007. Following the letter, with the exception of the customer service committee, whose work was complete, all committees were directed to suspend operation until spring 2008.

The most significant change was the commitment to ensure that 50 per cent of standards development committee membership is comprised of persons with disabilities or disability community representatives. Committee members are appointed by the minister. To achieve the 50 per cent level, additional members from the disability community were recruited to each of the four committees still at work, in late February or early March 2008. At the same time, it was made clear that committees could vote on individual clauses rather than having to vote on a proposed standard in its entirety.

A further commitment was made to waive ministries' official roles as committee members. This was done: ministry representatives were no longer eligible to vote on committee decisions but continued to attend meetings.

As well, in January 2008, in line with another commitment, the ADO assigned a full-time staff person to co-ordinate support for committee members from the disability community. After consultations, the staff person put in place an online collaborative tool so disability representatives could share information and documents, organized teleconferences and face-to-face meetings to help the disability community find common ground, and arranged for specialized expertise to support the work of the disability members.

Terms of Reference for the Independent Review

The independent review of the AODA was provided with terms of reference by the Ministry of Community and Social Services.

The purpose of the review was to ensure that the Accessibility for Ontarians with Disabilities Act, 2005 is effective for people with disabilities, businesses and organizations. In particular, I was asked to focus the review on four areas:

1. The standards development committee process
2. The functions of the Accessibility Directorate of Ontario, including public education
3. Recommendations for a repeal strategy for the Ontarians with Disabilities Act, 2001
4. The role of the municipal accessibility advisory committees.

The terms state that an examination of the standards development committee process should form the foundation of the review, including an analysis of the effectiveness of the process and recommendations for improvement. Since four of the five accessibility standards were not completed when the review began, an assessment of the standards and compliance with the regulations was outside the scope of the review.

The terms of reference included the authority to recommend amendments to the AODA and to make recommendations for the consideration of additional accessibility standards.

Open for Business

Under the terms of reference, the recommendations from the review should take into account the principles of Ontario's Open for Business initiative, announced in March 2009, to create a competitive economic climate supported by faster, smarter government.

As part of the Open for Business strategy, the government is committed to reducing the amount of regulation in Ontario by 25 per cent over a two-year period, by March 2011.

Participatory Consultation Process

The AODA requires the person reviewing the act to consult with the public and, in particular, persons with disabilities. The review was grounded in a commitment to an open and participatory process.

In line with this commitment, I have made every effort to reach out to anyone interested, especially people with disabilities and the organizations that represent them.

I am extremely grateful to everyone who took the time and made the effort to take part in the review. Their input and insights have been invaluable to me in my deliberations.

I believe the various consultation channels utilized have ensured that any individual or organization that wanted to participate was given an opportunity to be heard. It was very important to me that the review be inclusive and that is why I strived to make myself available and to make the process as open and transparent as possible.

Let me make an observation concerning the availability and importance of American Sign Language (ALS) interpreters and Langue des signes québécoise (LSQ) interpreters, real time captioners and attendant care workers. In my own consultations we experienced challenges in scheduling sessions as a result of the limited supply of these necessary services across the province. It became clear to me that it is critical for these resources to be available in order to make it possible for people with various disabilities to fully participate in public forums, especially where the issues being discussed relate directly to accessibility. As we move to 2025, strategies to increase the supply of these critical human resources need be considered.

The people who have taken part in activities under the act are in an excellent position to assess its effectiveness. I therefore held close to 90 meetings with people who could be categorized as key informants with first-hand exposure or specialized knowledge of the implementation of the legislation. These individuals represented a diverse array of interests – including disability groups, business associations, the provincial government, municipalities, transportation, hospitals, labour, postsecondary institutions and the school system.

In addition, four separate roundtable sessions were held – with the private sector, accessibility groups, the transportation sector, and the broader public sector (municipalities, universities and colleges, schools and hospitals).

All members of standards development committees were invited to complete an on-line questionnaire seeking their views on what worked, what didn't and how the process could be improved. Close to 100 responses were received, approximately 40 per cent from people with disabilities or representatives of disability organizations.

Public outreach was a major aspect of the consultation process. The review held public meetings in Toronto, London, and Ottawa and heard from many presenters, most on behalf of disability groups or obligated organizations and some by individuals relating their personal experiences. In addition, there were many who attended the session as observers, some of whom also participated in the discussions. Videoconferences were arranged for five northern communities – Sudbury, Thunder Bay, Sault Ste. Marie, Kenora and Marathon – involving local participants.

The review made use of current technology to reach people with disabilities who otherwise would not have been able to participate. Citizens with Disabilities Ontario (CWDO) organized an innovative webinar where more than 100 people engaged in an online discussion. In addition,

in cooperation with CWDO, La table provinciale francophone pour la personne handicapée held a webinar with over 40 individuals from the francophone community. This approach allowed individuals across the province to participate from home.

Call for Submissions

A call for written submissions was posted on the ministry's website shortly after the review began. In all, more than 58 written submissions – in addition to hundreds of emails – were received from both organizations and individuals providing input for the review.³⁰

The most detailed brief came from the Accessibility for Ontarians with Disabilities Act Alliance, the successor to the ODA Committee. The alliance addressed a wide range of issues – such as the rate of progress so far, an approach to repeal the ODA, government leadership, the standards development process, enforcement of standards, and technical supports for the disability community. The alliance brief was endorsed by several disability organizations.

Many other groups made submissions or presentations, such as the Ontario Federation of Labour, the Canadian Federation of Independent Business, the Ontario Home Builders' Association, the Canadian Mental Health Association (Ontario), the Canadian Hearing Society, Community Living Ontario, the Learning Disabilities Association of Ontario, the Ontario Community Support Association, the March of Dimes, Persons United for Self-Help in Northwestern Ontario, the Ontario Hospital Association, the Association of Municipalities of Ontario, the Ontario Human Rights Commission, and the Ontario Public Transit Association/ Canadian Urban Transit Association.

What the Review Heard

Since the AODA represents a new and innovative approach to accessibility, it is not surprising that there have been challenges as the various elements have been implemented.

Many people and organizations took the time to meet with me and to provide written briefs outlining their views and experiences. Sharing these comments is an important part of the review process. What follows summarizes the key issues and suggestions made throughout the consultations.

³⁰ See the Appendix for list of written submissions received.

Key Themes

The review learned much about the problems and suggestions to address them. This input was extremely constructive and provided a wealth of insight and information. Common issues were consistently raised, although the concerns were not always the same. The input can be grouped under four key themes:

- Leadership
- Implementation challenges including harmonization and costs
- Integration of the AODA with other legislation and initiatives
- The standards development process

In addition, the review received input regarding an ODA repeal strategy, the role of MAACs and the need for additional accessibility standards. I also met with staff of the U.S. Access Board to better understand the American experience.

The following sections present the highlights of what was heard under each theme.

Leadership

Leadership in the drive for accessibility is generally seen as a key responsibility of government. It is up to government to articulate a vision for an accessible Ontario, keep accessibility a high priority and mobilize public support. Virtually everyone consulted during the review felt that stronger government leadership is required to achieve the vision for 2025.

Vision and Goals

I was heartened to find strong, sincere and universal support for the purpose and vision behind the AODA. During the consultations, both persons with disabilities and the representatives of industries and sectors agreed that the act was transformational and called for fundamental social change that would benefit society as a whole. While those consulted expressed many concerns about how the AODA has been implemented so far, these views were unfailingly presented in the spirit of making the legislation operate better so that an accessible Ontario will in fact be realized.

While many elements of the process need improvement and possible reconsideration, we need to uphold Ontario's AODA as a model of policy excellence in Canada, and remember the tremendous opportunities right in front of us to pro-actively address the ever growing challenges of tomorrow.

— Written Brief, March of Dimes Canada

The cornerstone of the AODA is the development of accessibility standards through an inclusive process. During the consultations, representatives from all sectors agreed that standards are necessary to move the yardsticks toward an accessible society. An inclusive process involving the disability community, the obligated sectors and government received wide support. It was acknowledged by many as innovative and groundbreaking.

The Role of Government

A strong sense exists, particularly among people with disabilities, that momentum has been lost since the AODA was passed in 2005. With only one standard in effect after four years, many – especially in the disability community – feel the province is behind schedule as the clock ticks toward the 2025 deadline.

While acknowledging the dedication and hard work of the government staff involved, many people consulted believe implementation of the act has become bogged down in the government's day-to-day, "business as usual" processes. Some observers in the disability community feel the move of the ADO to a "complex ministry" like Community and Social Services, which administers large-scale social services programs, is part of the problem. Their view is that accessibility issues might have more visibility in a smaller, more policy-oriented ministry. Moreover, it was often noted that the government is in a complicated and possibly contradictory position, as both the creator and enforcer of regulations and the largest obligated organization.

Stakeholders sense that accessibility is being overlooked as the government goes about its everyday work. A silo mentality seems to have emerged, with little coordination among ministries and no coherent strategy. For example, disability groups were disappointed by the government's failure to make accessibility a criterion for awarding infrastructure funding, particularly in the recent stimulus package and in the major investments in recent years to renew the capital facilities of hospitals and universities. This is seen as a huge lost opportunity.

Moreover, while legislative amendments to improve accessibility for voters and candidates in municipal elections were passed in December 2009, many in the disability community view these measures as weak. Proposed amendments covering provincial elections are also believed to need strengthening.

Representatives from the Ontario Disabilities Support Program (ODSP) Action Coalition and from a number of Centres for Independent Living raised the need for government to provide more adequate financial support for these programs. They allow persons with disabilities to lead fuller lives and are an important building block to an accessible Ontario.

In addition, despite the requirements of the ODA, people with disabilities report excessive delays in obtaining government publications in accessible formats, and point out that government

websites do not meet current international accessibility standards. And disability stakeholders note that the government has yet to undertake a promised review of all Ontario laws to find any barriers that need to be removed.

In general, a strong perception exists that only more vigorous and focused leadership from the provincial government can get things moving again. Nonetheless, most stakeholders remain optimistic that Ontario can “get it right” and deliver on the promise of the AODA.

Public Awareness

The minimal awareness of the AODA among both obligated organizations and the public at large was frequently mentioned. Even some members of standards development committees knew little about the legislation when they began their work. And when committee members told colleagues in their sectors what they were doing, they often found people had no idea this work was underway.

The attitudinal barrier, if not addressed, can grow to substantially impede the AODA’s mandatory goal of full accessibility.

— Written Brief, AODA Alliance

This awareness gap is viewed as a huge hurdle to securing compliance as standards are phased in. Many in the disability community, in fact, regard attitudes as the biggest barrier they face. They believe that attitudinal change must go hand in hand with the implementation of standards or else the AODA will not succeed and a backlash could even result. People with invisible disabilities, such as mental health or learning disabilities, emphasize that the attitudinal barriers confronting them are significant and only beginning to be acknowledged. Both people with disabilities and representatives of the obligated sectors agree on the need for the government to make a substantial investment in public education and awareness as part of the rollout of standards, to create a culture and environment to support change.

Part of the problem appears to be the vagueness of the vision expressed in the AODA itself. Many stakeholders in both the disability community and the obligated sectors found it hard to visualize what an accessible society would really look like.

One initiative mentioned was the government’s 2008 advertising campaign on transit vehicles and bus shelters across Ontario, supported by print ads in commuter papers. Stakeholders however felt that the campaign had little impact on public awareness.

Implementation Challenges

While support for the vision behind the AODA is wide, much anxiety exists about how this will be achieved. In written submissions, public meetings, sector round tables and individual interviews, stakeholders raised four major challenges involving the implementation of standards, once adopted. These are: harmonization, costs, education and training, and compliance and enforcement.

Harmonization

First and foremost is what has been described as the challenge of harmonization. The AODA applies to all Ontarians – that is, all persons or organizations in the public, private and not-for-profit sectors, and soon five standards under the act will be in place. As the review has repeatedly heard, however, the standards as proposed were developed in isolation from each other and contain inconsistencies and overlaps. The lack of alignment is expected to increase compliance costs and in fact make those costs hard to estimate. Moreover, the review was advised that since communication between the committees was restricted to formal correspondence by the chairs, a number of interconnected issues appear to have been left unresolved.

The OHA and its members appreciate the importance of making public facilities, such as hospitals, more accessible and have made considerable efforts to promote practices in this regard. Hospitals are generally supportive of Standards individually, but are concerned that the requirements set out in each Standard when combined with the requirements in the other Proposed Standards, will place a significant burden on hospitals. Additional Supports, including additional resources, sample accessibility policies and educational programs, would help facilitate the implementation of the AODA and compliance with the Standards, and would limit potential costly duplication of efforts amongst hospitals.

— Written Submission, Ontario Hospital Association, November 2009

The potential for confusion and misunderstanding is high. For example, each proposed standard uses its own criteria for classifying obligated organizations, by function and size, and establishes a series of accessibility requirements and timelines depending on the classification. Since the same organization could be classified in different ways by different standards, requirements could be more substantial and timeframes more demanding under one standard than others. Training is also a key issue – it appears organizations might be required to hold repeated training sessions for the same employees to meet different deadlines.

As well, given the various timeframes, concerns were expressed about the availability and supply of accessibility products and specialized consulting services to support compliance.

In considering timelines, stakeholders stressed the importance of setting priorities in the context of accessibility overall rather than viewing each of the five aspects of accessibility on its own. Since all five standards are linked to the common goal of full accessibility by 2025, they should be treated collectively. A bigger, integrated picture is needed to determine what should truly be done first.

Virtually all stakeholders who have been involved in the AODA standard development process have indicated the need for the standards to be harmonized. This need is predicated on the fact that the four common standards being developed will apply to all sectors of the Ontario economy, that is both private and public, impacting all facets of the respective operations, operations that within an organization are linked. As such, it is critical in order to establish an effective and efficient process to deal with AODA requirements, to have all expectations clearly defined, understood and implemented in an effective, efficient and sustainable manner.

— Written Brief, London Transit on behalf of the Canadian Urban Transit Association and the Ontario Public Transit Association (An Approach to the Harmonization of AODA Standards)

Municipal and transit representatives in particular believe that this picture needs a local focus: some priorities should be set at the local level rather than taking a “cookie-cutter”, province wide approach. Transportation needs, for example, vary greatly between northern and southern Ontario, and between rural and urban areas, and the implementation of standards should reflect this reality.

One approach to address the challenge was outlined in a submission from London Transit on behalf of the transit industry and endorsed by the Association of Municipalities of Ontario and by many municipalities across Ontario. The paper suggested revising the proposed compliance timeframes to leave an element of the harmonization exercise to the discretion of obligated organizations. This approach would give obligated organizations the flexibility to implement changes in accordance with local priorities and capacity. The paper recommended a compliance process with four stages applicable to all standards: set priorities; change policies and procedures; train employees and communicate changes to the public; and implement the new policies and procedures. The stages could overlap but each would have a deadline. The implementation stage would be completed by 2020 – leaving five years to address any shortfalls before 2025.³¹

The Accessibility for Ontarians with Disabilities Act Alliance responded that under this approach, accessibility requirements could not be enforced until 2020, 15 years after the AODA’s enactment. The alliance described this as “a formula for gutting the core of the AODA” that would substantially delay achieving accessibility for persons with disabilities.³²

³¹ Written Brief- London Transit on behalf of the Canadian Urban Transit Association and the Ontario Public Transit Association (An Approach to the Harmonization of AODA Standards).

³² Accessibility for Ontarians with Disabilities Act Alliance. “Harmonization Yes –Evisceration No!” October 2009.

While not everyone offered a solution, many stakeholders saw the issue of harmonization as one of the key priorities for the government to address in its review and preparation of the regulations for the remaining standards.

The Cost Question

At the root of many issues related to timelines are worries about cost. That is, if timelines are stretched, organizations will have more opportunity to build accessibility into their normal business and capital planning cycles. Several in the obligated sectors contend that many of the timelines in the proposed standards are unrealistic and set expectations too high, particularly given current economic conditions and financial challenges.

Social policy must go hand in hand with economic reality or quality of life will diminish for everyone.

— Written Brief, Motion Picture Theatre Association

All obligated sectors expressed significant concerns about affordability. The review heard many calls for the provincial government to identify sources of funding for the broader public sector to implement the standards, as well as sources of financial assistance for business and not-for-profit groups. Even government ministries and agencies themselves are apprehensive about their capacity to meet accessibility requirements within their own operations.

We agree with the intended spirit of the proposed standards and believe that some of the measures in the proposed Standards could be effective in assisting to improve accessibility for people with disabilities. That being said, it is essential to understand that such measures can only be effective if the Standards are practical and reasonable and if the associated costs are manageable. Otherwise affected stakeholders would not be able to comply with the new measures.

— Written Brief, Canadian Life and Health Insurance Association Inc.

The AODA imposes accessibility requirements on the private sector and the non-profit sector for the first time. Small business and small not-for-profit organizations are especially worried about the impact, pointing out that what would be small costs for large organizations could be big costs for them. A small not-for-profit housing provider hoped that financial help would be available from government. One suggestion from small business was to provide a training tax credit to help cover the cost of employee training required by the standards. The taxi industry proposed accelerated depreciation allowances for operators who invest to meet accessibility requirements. Many large organizations in the private and not-for-profit sectors have already done much to improve accessibility, but even these stakeholders are concerned about the cost as standards take effect.

More generally, business representatives urged the government to consider the broader economic environment and the impact of the overall regulatory burden on growth and job creation, especially in a recession. People with disabilities had a different outlook on the cost issue and underlined the need for a balanced cost/benefit analysis. By and large, the disability community is concerned that cost will be used as an excuse for inaction.

Few people seem to realize that meeting the AODA standards might increase their customer base or allow more individuals with disabilities to work and contribute to the economy.

— Written brief/Presentation (London) –Sandra Hobson

All sides seemed to feel that the costing studies done for the committees were of little help. Perhaps the problem is that until standards are finalized, it is hard to define exactly what is being costed. People with disabilities also noted that no real attempt was made to measure the positive economic benefits of accessibility, such as increased labour force participation and consumer spending by people with disabilities. Hence, they contend that the net costs of accessibility are overestimated. The review is aware that the ministry has commissioned research by the Martin Prosperity Institute at the University of Toronto to quantify the economic benefits of accessibility. The results of this research should lead to a more balanced perspective on the costs and benefits of accessibility.

Education and Training

A third implementation challenge focuses on stakeholder awareness, readiness and preparedness. Calls were heard on all sides for a massive effort to educate business, the broader public sector and other obligated organizations on what they must do to comply with the AODA. This issue is related to the harmonization question, as the package of standards currently proposed would be extremely difficult to communicate, making it hard to achieve compliance. Some stakeholders recalled the rollout of the Building Code in the 1970s and the Fire Code and site plan controls in the 1980s as examples of the scale of the compliance effort that will be necessary.

Several participants urged the government to supply free downloadable tools to help organizations understand their obligations. Others called on the government to release information materials at the same time as the final regulation is published, noting that the materials on the customer service standard were months late. Needs are especially great among small businesses and not-for-profit organizations, which do not have the human resources staff to handle the compliance effort anticipated.

Train-the-trainer programs and other training resources will be essential. Already, private trainers are offering services, even though there is little to go on as far as what the content should be. It was widely felt that the ADO must fill this void with training guidelines and resources.

The ADO's Enabling Change Partnerships program was recognized as a successful way of encouraging sectors to develop educational resources tailored to their own needs. The program funds projects by trade or service organizations to promote compliance with the AODA and accessibility standards. In 2008-09, Colleges Ontario, the Council of Ontario Universities, the Ontario Education Services Corporation, the Ontario Hospital Association, the Ontario Public Transit Association and the Ontario Community Support Association were among the organizations that received funds to develop resources – such as training tools – to help their members comply with the customer service standard. Earlier, the Retail Council of Canada secured funding from the ministry to create awareness and compliance materials for retailers, including the interactive "How May I Help You?" staff training resource.

A number of suggestions were made for associations in both the disability and obligated sectors to build on collaborative projects like these. These umbrella groups could organize the sharing of best practices and develop education and information resources so their members will be in a position to meet their obligations under the AODA.

Compliance and Enforcement Framework

During the consultations, much interest was expressed in the compliance and enforcement procedures the government will put in place to implement the standards. Stakeholders in both the obligated sectors and the disability community were surprised that the compliance and enforcement framework had not yet been released given the January 1, 2010 effective date for the customer service standard for the provincial government and broader public sector.

The AODA Alliance called for an independent, arm's-length enforcement agency, as well as a new, independent tribunal to hear appeals.

CHS strongly endorses the need for establishing strong, enforceable, and effective regulations under the AODA. We also strongly endorse developing effective enforcement, quality assurance, and resource development provisions to properly support the enforcement of those regulations.

— Written Brief, The Canadian Hearing Society (CHS)

Many wonder if the government will emphasize education and support, or take a more punitive approach. People seek answers to such questions as how often accessibility reports will be required, what they will contain, who will review them, what the follow-up will be, who will do inspections and under what circumstances, and which tribunal will hold hearings. While outside the scope of the review, these issues were frequently raised during the consultations.

Integration with Other Legislation and Initiatives

The harmonization issue has a larger dimension, beyond how accessibility standards fit together. This involves the relationship between the AODA and other legislation, particularly the Human Rights Code, and with other government initiatives.

Human Rights Code

Because the Human Rights Code has primacy over other legislation, the obligated sectors are concerned about double jeopardy. Compliance with AODA standards would not necessarily represent compliance with the code. Hence organizations that meet the standards could still be subject to complaints of discrimination by individuals. Proceedings before the Human Rights Tribunal of Ontario could result.

The AODA can lead to improved accessibility for persons with disabilities by using a standardized approach that complements the individualized approach to accessibility adopted by the OHRC.

— Written Brief, The Law Society of Upper Canada

Representatives of people with disabilities had a different viewpoint. They were concerned that standards under the AODA might provide a lower level of accessibility than the Human Rights Code calls for. The code requires accommodation of the needs of persons with disabilities, up to the point of “undue hardship.” Setting the bar lower would defeat the intent of the AODA, which is to achieve accessibility without forcing people with disabilities to fight barriers on a case-by-case basis.

The OHRC has always taken the position that while the [Human Rights] Code itself is the primal law in Ontario for disability rights, the Code and the OHRC must not stand alone. Complementary legislation, policies and programs that promote and enforce compliance are very necessary for achieving a barrier free society.

— Written Brief, Ontario Human Rights Commission

The way these two laws co-exist and interact is confusing to many. It was suggested that the AODA should have clarified the relationship between the two measures.

Open for Business

Representatives from Ontario's Open for Business office outlined the government's priorities for this initiative. The policy involves action in three key areas:

- Modern Services: transforming the way government delivers services to business across Ontario by making it easier to interact with government
- Modern Government: transforming the way government develops policies and provides regulatory oversight, re-orienting how it works with business
- A New Relationship with Business: reaching out to business to create a new, open and transparent relationship and working with business on common goals of safety, prosperity, jobs and economic growth.

A key objective behind this initiative is regulatory reform to improve public protection, while reducing costs to business and supporting a competitive economic climate. Ontario is looking to become a leading jurisdiction in modern regulation through reforms to:

- Involve business in regulation development from the outset
- Develop high quality regulations by reducing the regulatory burden, seeking alternatives and simplifying and harmonizing requirements
- Change government's approach to compliance to make it consistent, coordinated, efficient, transparent and predictable
- Help and support businesses to comply.

This policy came up in discussions with other stakeholders. Business representatives wondered how the implementation of AODA standards could be reconciled with the commitment to reduce the regulatory burden and regulatory costs. Some suggested that the government should consider this policy in the context of harmonizing the standards and aligning the standards with other legislation.

Worsening the regulatory overload will limit the ability of small businesses to grow and provide jobs.

— Written Brief, Canadian Federation of Independent Business

Mental Health

Both the federal and provincial governments have made mental health a priority.

The federal government has created the Mental Health Commission of Canada, which is working on five key initiatives: a national mental health strategy; an anti-stigma initiative; homelessness research demonstration projects; a knowledge exchange centre; and the Partners for Mental Health Program.

In Ontario, the Minister of Health and Long-Term Care has created a special advisory group on mental health and addictions to advise on policies and programs. In February 2009 the legislature created a select committee on mental health and addictions – with members from all three parties – to help develop ways to improve access to mental health and addiction services in the province.

Representatives from the mental health and addictions field stressed that the government should take these initiatives into account as it implements the AODA.

Aboriginal Communities

Representatives of Aboriginal communities stressed that their unique needs should be taken into account in both developing standards and enforcing compliance.

French Language Services Act

Francophone representatives commented on many of the same issues and concerns expressed by others from the disability community. One point in particular was the need for the government to ensure that French- language accessibility programs and services are consistent with the French Language Services Act.

Other Laws and Regulations

Issues about the Building Code and the Employment Standards Act were also raised. Some suggested integrating the built environment standard into the Building Code.

Standards Development Process

As might be expected, given the review's focus, the standards development process generated the most discussion during the consultations. First and foremost, it was widely recognized that the process directly involved more than 200 disparate participants who came to the table with a strong sense of commitment and dedication. These individuals contributed an enormous amount of time, thought, resources and energy to a difficult and lengthy exercise with a genuine intent to achieve the vision of the legislation.

Overall, stakeholders agreed on the value of the collaborative approach and saw the inclusion of members from the disability community and from the obligated sectors including government as a positive feature. Bringing different perspectives together was seen as an ambitious but worthwhile undertaking. Though the experience was frustrating at times, most of those consulted were satisfied that an important conversation had at least been started. The challenge now – as seen by many – is to fix the problems that have emerged and build on the strengths of the inclusive, collaborative process established under the AODA.

Committee Membership and Composition

The ADO posted an application form for membership on each standards development committee online, with supporting information. These materials were also available by mail, fax, email and alternate formats. Once recruitment closed, the ADO and relevant ministries worked together to assess applicants and recommend candidates to the minister. Selection criteria were adopted, including:

- endorsement of the applicant by organizations, communities or areas of expertise (although unaffiliated individuals were also permitted to apply)
- knowledge or expertise about sectoral issues and about identifying, removing and preventing barriers
- experience on boards, committees or teams
- volunteer or professional skills linked to disability or accessibility and
- strong communication or interpersonal skills.

On paper, the selection process looks sound but a number of issues were raised about its transparency and effectiveness. While online applications were taken, it appears a number of the members appointed did not go through this process but were invited to join. The wisdom of appointing unaffiliated individuals was questioned, as they appeared to be advocating personal positions rather than speaking for a larger constituency. Committees were often dealing with highly technical issues but lacked the required technical expertise. In addition, a number of members did not have previous committee or negotiating experience. Larger municipalities and transit systems have accessibility advisory committees, but many suggested that this pool of talent went largely untapped in recruiting standards development committee members.

Despite the increase in the disability membership of committees to 50 per cent, concerns were expressed that non-visible disabilities – such as mental health or learning disabilities – were underrepresented. As a result, some felt the proposed standards did not effectively respond to the needs of these groups. There was also a widespread feeling that the private sector, especially small business, was underrepresented. Some private sector stakeholders called for a return to the original structure for committee membership, with a balance among disability, business, government and the broader public sector.

Mandate and Scope

Some problems can be traced to the very beginning of the committee process, in the terms of reference and initial orientation materials.

It is widely believed that the committees' terms of reference were too vague, leading to an open-ended exercise. With hindsight, some feel that the committees' scope should have been limited to policy issues – that is, setting goals and objectives – which a citizens' committee of individuals who did not have technical expertise could readily do. Meanwhile, operational issues – how to accomplish the goals – could have been turned over to technical and sectoral advisory groups.

Along similar lines, some stakeholders believe the proposed standards in general are too prescriptive. They would have preferred a performance-based approach, where regulations set objectives and leave it to the obligated organizations to decide how to meet them.

The initial background documents – known as “seed documents” – provided by the ADO to most of the committees as a starting point for discussion were seen as problematic. One document, for instance, was said to take examples from some jurisdictions out of context while ignoring relevant best practices from others – including Ontario. In general, the documents did not present viable options and as a result the discussion began with unrealistic expectations and without a sharp focus or overall policy guideposts. Some suggested that the ministry should have provided a draft standard as a basis for the deliberations.

A disagreement arose within the built environment committee about whether single family housing and building retrofits were within its scope. When the ministry released the initial proposed standard for public review, it indicated that the standards regarding single family housing and retrofits would not be considered at present. This decision led some committee members to protest that the government should have made these parameters clear at the outset.

Resourcing

The review heard many comments about the lack of support and resources necessary to be effective, both individually as members and collectively as a committee.

Given the inexperience of some committee members with consensus-building exercises, intensive orientation in the basics of government processes, the content of the AODA and the role and objectives of the committee would have been helpful. It was frequently noted that the orientation program for committee members did not meet these needs.

Despite the increase in their representation to 50 per cent, people with disabilities who served on committees reported feeling overwhelmed by business and other sectors – as well as by the process itself and the sheer volume of materials and documents. Disability representatives did not have access to resource teams or technical and legal advice to develop their positions as other sectors did; as a result, many in the disability community felt that their voice was not as effective as it could have been.

When the committees resumed deliberations in 2008, the ADO assisted disability members on some committees to work together between meetings. Still, it was widely felt that the committee members from the disability community did not receive enough support to tackle many of the more technical issues.

While the ADO was generally respected as a valuable resource throughout the process, some believe staff could have been better prepared and more helpful at times. A high level of staff turnover was a problem, breaking continuity in the support provided and sometimes leaving committee members wondering exactly what resources were available.

The efforts of the ADO to provide accommodations so that the committee members from the disability community could participate fully in the deliberations were widely appreciated. However, the review was told of a few instances where accessibility needs were not met.

The Workings of the Committees – Key Challenges

Size of Committees

Many people expressed the view that the committees were simply too big and unwieldy to work well. Four of the five committees had from 38 to 46 members. Such numbers were seen as making it almost impossible to engage in constructive conversation and debate, ensure everyone's voice was heard and reach consensus on key issues.

Workload

The commitment of time and effort required of committee members and chairs was far greater than anticipated when they agreed to serve. The workload increased with the government's

decision to add more representatives of people with disabilities. Many issues had to be revisited for benefit of the new members and much of the same ground covered again. It appears the progress of some committees was significantly delayed due to the expansion of membership. Given the workload, it was frequently mentioned that committee members should have received some form of monetary compensation.

Decision-Making Model

Concerns were raised with the model of decision-making adopted by the committees. Approval of a measure required at least 50 per cent of the total voting membership to vote "yes", and at least two thirds of the votes cast to be "yes" votes.

A number of observers feel the increase in disability representation shifted the model from consensus to negotiation, but the committees lacked the negotiating skills and support structure to make this approach work. In some cases the change in membership affected the working relationships on the committee. For example, stakeholders advised that the transit committee became polarized into "us and them" camps, and some say this happened to a degree on other committees as well. To some extent, these issues were also the result of the timing of the changes, as some committees were already far along with their work.

More generally, many representatives from the obligated sectors found it hard to explain why ideas would not work without seeming insensitive to people with disabilities. Some members representing various sectors noted that they often did not have enough time to get feedback from their constituents on issues before the committee moved on to other matters. As a result, decisions were made too quickly and without enough consultation with those affected. Subcommittees did much work to develop proposals, but it was not always clear what their decision-making procedures were and how their recommendations were reviewed by the full committee.

However, all this is not to say that no meeting of minds occurred; there were a number of "aha" moments, as one committee member put it.

Voting Procedures

The way voting was conducted drew criticism. In some cases, it appears documents to be voted on were presented at the last minute – and sometimes not in accessible formats – so members could not properly review them. Some committee members believe clause by clause voting proved to be impractical, as rejection of one clause could undermine other clauses that stayed in place. Since abstentions were not permitted (and were recorded as a no vote), some members felt obliged to vote on technical issues they did not understand. Others felt the results were influenced by pressure to meet deadlines when more time should have been spent on some questions. A number of issues that could not be resolved were put aside for discussion later, but never revisited.

Public Review

Problems were reported with the process for public review of the initial proposed standards, which involved public meetings and written submissions. Apparently committee members were not permitted to speak at the meetings, even though many of those attending were expecting an opportunity for dialogue. Moreover, little in the way of background information was provided at the meetings. As a result, some stakeholders felt that the sessions did not provide an opportunity for meaningful feedback on the proposed standards.

Some committee members remarked that they found the summaries of comments from the public review to be incomplete or misleading. It was noted that at present, once the committee submits the final proposed standard to the minister, that is the end of the formal public consultation process. Some observers suggested that the government should release draft regulations for public comment before finalizing them.

Roles and Responsibilities

Apart from the committee members representing people with disabilities and various sectors, the standards development process involved other players: the committee chairs, the ADO, the Canadian Standards Association (CSA), facilitators, and committee members representing government ministries. Often the roles and responsibilities of these different players were perceived as unclear or overlapping. This situation undermined the effectiveness and efficiency of the process, despite good will on all sides.

For example, some committee members were uncertain whether the government representatives were there as advisors or stakeholders, even after they no longer had voting rights. For their part, after they ceased to have a voting role, the role of government representatives became more that of observers. And there were various opinions about the CSA's contribution. Several participants felt the CSA staff were not allowed to do what they do best – develop standards – and were instead relegated to an administrative role. Others expressed doubts that the CSA had the policy expertise needed to deal with standards that are not mainly technical in nature.

Some suggested that the government should not be involved in the standards development process, while others felt government should be at the table.

ODA Repeal Strategy

In the terms of reference, the review was directed to consider a repeal strategy for the Ontarians with Disabilities Act, 2001. During the consultations, few stakeholders raised this issue on their own but some did offer comments when asked.

Views diverged on how and when to repeal the ODA.

The ODA was not a welcome piece of legislation in the disability community. Its exclusive focus on the public sector and its failure to provide any requirement that barriers be removed meant that it appeared to be mere window dressing. The AODA was warmly welcomed because it was thought that it would correct those shortcomings. Curiously, the ODA has demonstrated more promise than was originally anticipated, while the AODA has demonstrated less. This is not to say that the ODA alone would lead to a barrier free future for the citizens of the province who have disabilities. If we must have one or the other, we would certainly choose the AODA.

— Written Brief, Community Living Ontario

When the ODA was enacted, the disability community felt it had significant shortcomings. Yet almost a decade later, it is widely credited with raising consciousness of the barriers facing people with disabilities, and in some cases with achieving tangible progress on the removal of barriers. Today, there is a definite reluctance among disability groups to see the ODA repealed.

The AODA Alliance believes the whole question is premature and repeal should be deferred until 2025. The alliance said its position would change only if it could be shown that nothing in the ODA could help move Ontario toward accessibility by 2025, and that everything the ODA requires has been replicated under the AODA. Neither of these conditions now exists, the alliance pointed out. Other groups suggested that the ODA should be left on the books until all five accessibility standards are in place and it can be confirmed that all ODA requirements have been brought forward into the standards.

Representatives of the provincial government and the broader public sector emphasized the need to simplify requirements as much as possible. Having one piece of accessibility legislation rather than two was seen as a way of doing this. It was also suggested that when the act is repealed, it should be done at once and not in stages.

At the same time, the sectors now obligated to undertake planning recognized its value, and considerable support was expressed for continued planning under the AODA centred on compliance with standards. However, there was a strong feeling that any planning obligations carried over to the AODA should be streamlined with reporting requirements on compliance with standards, to avoid two separate administrative processes. One suggestion was to require a four-year accessibility plan with annual revisions, rather than an annual accessibility plan. The private and not-for-profit sectors had little to say about the ODA repeal, likely because the ODA and its planning requirements do not apply to them.

Role of Municipal Accessibility Advisory Committees

The review was also asked to examine the role of Municipal Accessibility Advisory Committees (MAAC). Approximately 150 Ontario municipalities, about one third, have established such a committee. As might be expected, the review heard about MAACs from municipal staff, council members and members and chairs of the committees, as well as from the disability community and provincial associations representing municipalities.

Over the past eight years MAACs have evolved in terms of their functions, effectiveness and impact. Many in the disability community see the advisory committees as giving people with disabilities a voice and a level of respect they did not have before. The review was told that the success of a MAAC and its ability to make an impact depends on a number of factors including: how long it has been in existence, the size of the municipality, the support received from the council and staff, the reporting structure to council, and the level of understanding of the committee members and council about the committee's purpose, role and function. Many stakeholders felt that the MAACs, which have mainly advised on planning under the ODA, should now shift their focus to providing advice on implementation and reporting under the AODA.

Municipal representatives believe the AODA has significantly changed the committees' advisory role, shifting the emphasis from accessibility planning to the implementation of standards and reporting on compliance. Concerns were expressed that committee members do not have the experience, the technical expertise or – given their ongoing duties under the ODA – the capacity to play this new part effectively.

Suggestions were offered to strengthen the mandate of MAACs and ensure that their advice is considered in the municipal decision-making process. For example, municipalities could be required to make every effort to act on recommendations or to provide reasons for not accepting a MAAC's advice. Some stakeholders raised concerns that the membership of some MAACs did not reflect a broad enough range of disabilities. More balanced representation would help the committees to better address the needs of people with mental health, learning or other invisible disabilities.

While many MAACs have achieved solid results, there have been few opportunities to share these experiences with other communities. It is widely believed that more networking and sharing of best practices could increase the pace of change. The regional education forums organized by the ADO in spring 2009 were cited as a good example of the type of support needed by MAACs and municipalities.

Stakeholders agreed that the ADO has an important role to play in building the capabilities of MAACs. Apart from the regional forums, many mentioned the tool kits and guide books prepared for MAACs as very helpful resources and that more needed to be done.

Additional Standards

Though included in the review's terms of reference, the need to develop additional accessibility standards was not a top-of-mind issue for most people consulted. When prompted, some did mention the possibility of considering accessibility standards for education or health care.

On the other hand, a number of stakeholders remarked that not all issues can be addressed in a standard and some may need to be dealt with through policy or legislation. Overall, the view was that the government should finalize the first five standards before considering new ones.

The American Experience

As part of my consultations, I met with senior officials of the United States Access Board in Washington, DC. The Access Board was established in 1973 to support the Architectural Barriers Act enacted in 1968. The board's mandate evolved over time including significant changes introduced with the enactment of the Americans with Disabilities Act (ADA) in 1990.

I am sure we have made a difference and by making the town more accessible for handicapped people we have also made it easier for everyone to get around in town. I think this is just the tip of the iceberg when it comes to our accomplishments.

— Written Submission, Alvin Guy, Fort Erie Accessibility Advisory Committee

Although there are many differences between the accessibility legislative framework in the U.S. and the AODA, there are general principles and best practices that can be applied to Ontario's approach to standards development and review. For example:

- an inclusive process that incorporates extensive involvement of the disability community and the obligated sectors on an ongoing basis
- a transparent process
- a recognized role and process for establishing technical and sectoral committees and
- a permanent accessibility board.

For more than 30 years, the U.S. model has been successful in cultivating a group of individuals who have built a significant and perhaps unique level of knowledge and expertise. Over the decades, the board's responsibilities and mandate has changed. Today, an important part of the board's role is to monitor developments nationally and internationally with respect to accessibility as well as the body of knowledge that is constantly evolving.

The board has been effective in bringing together key players from the disability community, government, the broader public sector and private industry. Its structure and process ensures broad public policy input from all sectors, coupled with knowledgeable technical and sectoral expertise. The board plays an important role in enhancing public awareness about the need for increased accessibility in the United States.

The Reviewer's Perspective

Before I turn to my findings and recommendations, I want to highlight a number of issues and observations that have shaped my approach to the review.

At the outset I want to state that for me the consultation process confirmed the dedication of Ontarians to the vision enshrined in the AODA. I was deeply impressed by the determination of individuals from widely different backgrounds to make the legislation work.

Context

The concepts of broad accessibility standards, timelines and collaboration are central to the AODA as is the goal for Ontario to be accessible by 2025. This is the framework the Ontario legislature has endorsed.

As noted earlier, the AODA calls for ongoing reviews of each standard every five years, as well as legislative reviews initially after four years and then every three years. It is important to keep this fact in mind in reading my report and understanding the context for my recommendations. Throughout the consultations, I have made a point of emphasizing the subsequent reviews. The act has created an ongoing process for public and transparent reviews on the functioning and implementation of the legislation.

I have also made it clear that in light of the timing of this first review and because most of the standards are not in place, I am not in a position to address all of the issues that have been raised. Some are premature, while others are outside my mandate. I recognize that the first review will leave a number of unanswered questions and unresolved issues that have been brought to my attention. For example, the government has not yet established its compliance and enforcement regime. This will begin in 2010 but will have to await a later review. I am satisfied that this issue and others will be addressed in time, either directly through the standards review process, or in the next legislative review, or indirectly as a result of my recommendations.

Ontario's Commitment

The AODA was passed unanimously by Ontario's Legislative Assembly in May 2005. Those who have had the privilege of sitting in the legislature will know it is a rare day when all members agree on an issue and how it should be addressed in legislation. This all-party support clearly reflects the will of the people of Ontario.

Indeed, this commitment to accessibility has been on the statute books since 1982 in the Human Rights Code, which prohibits discrimination on the ground of disability. In its submission to the review, the Ontario Human Rights Commission describes the relationship between the code and accessibility legislation as follows:

The relationship between accessibility legislation and the Code should be a harmonious and complementary one, albeit with necessary elements of natural tension.

The Code has legal primacy over all other laws including the AODA. That's important because it shows society recognizes "what should be": that persons with disabilities are inherently entitled to and should enjoy equal rights without discrimination; and that we all have legal obligations to ensure it happens. The AODA and other disability related legislation provide a means for getting us there.

The AODA is necessary because the removal of one barrier at a time through the code's complaint-based process will never on its own lead to a barrier-free society with equal access for people with disabilities.

While other jurisdictions such as Australia, the United Kingdom and the United States have shown leadership on this issue, Ontario's legislation is viewed as unique. The AODA provides a new approach for achieving an accessible Ontario – one based on standards to be developed collaboratively and applied across broad aspects of our social and economic life to bring about the greatest accessibility for the greatest number. By setting a 20-year implementation timeframe, the AODA also recognizes that accessibility will be achieved in an evolutionary way.

The AODA takes a systems-based approach. It is an instrument for transforming our attitudes toward people with disabilities. Its overriding goal is to achieve meaningful and tangible improvements to the lives of people with disabilities.

The Changing Face of Disability

In proceeding with the review, I have been struck by the impact that the shifting demographics of Canada and Ontario will have on the accessibility issue and how we deal with it. We have to recognize that over the next generation the face of the disability community will change. As our society ages, the number of older Canadians will increase and the number of people

with disabilities will increase in tandem with this trend. Moreover, medical advances mean that younger people with disabilities – from premature infants to workers suffering serious injuries on the job – are living longer.

The rising numbers include not only those with physical, hearing or visual disabilities but also those with various mental health, developmental or learning disabilities. The emerging disability population we are speaking about – when combined with their immediate family members – will soon represent close to 60 per cent of Ontario's population. From my own observations during this review, the older members of this group will be especially assertive in demanding improved services from all sectors to make their lives accessible.

Impact on Obligated Sectors

I believe it is also important to recognize the potential impact of the AODA on the obligated sectors.

It has been clear to me that the commitment to accessibility among all sectors is not in question. Moreover, we are not starting from a blank page, as progress has been made under the auspices of the ODA.

I recognize that a number of public, private and not-for profit sector associations – such as the Association of Municipalities of Ontario, the Ontario Chamber of Commerce, the Retail Council of Canada, the Ontario Hospital Association, the Council of Ontario Universities, the Ontario Community Support Association and other province wide organizations – have begun efforts to inform and educate their members about the AODA.

At the same time, however, I also sense a tremendous angst among representatives from the obligated sectors and fears that the cost of compliance will be burdensome. Part of this concern stems from frustration with the standards development process and the timelines for compliance included in the proposed accessibility standards.

This anxiety has been compounded by the dramatic change in the global and local economic climate since the AODA was passed. I want to stress that a difficult economy cannot be an excuse for abandoning the goal of accessibility. I do believe, however, that the current economic climate must be taken into account in considering the pace of change and the reasonable expectations for the obligated sectors as we meet the goal of accessibility by 2025. It is imperative to ensure that the implementation of all the standards and related procedures is well coordinated and harmonized. If this does not occur, it will not be possible to realize the intent of the AODA on time.

As indicated above, my mandate is to consider the effectiveness of the AODA for both the obligated sectors and the disability community. I heard from some in the disability community

that they fear the risk of alienating the obligated sectors and even more so the potential backlash when organizations realize the broad scope of the standards. This again shows why public education and stakeholder engagement are so critical to the success of the AODA. It is critical that the government build a broader public awareness and understanding about the AODA and that the necessary tools and supports be available for the obligated sectors.

Charting A Path Forward

Over the past several months I have often been asked if Ontario is moving fast enough toward the 2025 deadline. That is, are we going to meet the goal of accessibility by 2025? In fact, many have told me that they believe we are behind schedule.

For me, the larger question is whether we are moving in the right direction and that has been my focus.

What struck me very early on in my work and has remained a constant throughout the review is the lack of public awareness and engagement about accessibility generally and about the AODA, its goals and obligations, more specifically.

When the AODA went through the legislature in 2004 and 2005, it generated media attention and extraordinary optimism and enthusiasm from within the disability community. The public and broader public sectors were already somewhat attuned to issues around accessibility as they had had obligations under the ODA since 2001. For the public at large, however, the passage of the AODA was seemingly just a blip in the media. Some may have a vague recollection of the legislation passing but most Ontarians simply have no knowledge of what took place in May 2005. There is a fundamental lack of appreciation of the purpose of the legislation and its broad implications for our society as a whole.

This is why I strongly believe that, four and a half years into the implementation of the AODA, it is essential to raise the profile of the goals and objectives of the act and apply a renewed and refocused sense of commitment and leadership. I have concluded that structural changes are needed to deal with the issues identified.

There was a time when our society looked the other way when it came to issues like pollution, smoking, drunk driving, not using seatbelts, domestic violence and racial prejudice. Now these practices, while far from eliminated, are no longer socially acceptable. Instead we value a green environment, health promotion, road safety, women's rights and diversity. Accessibility for persons with disabilities must also be embraced as a core value of our society. We can do no less.

I have heard from many organizations and individuals over the past several months including people who struggle on a daily basis with a disability, advocates for the disability community and many from the various obligated sectors.

This review does not deal with some obscure public policy. Rather the AODA and ultimately the standards that will be put in place will touch every Ontarian. For some it may make the difference between leading a productive life or being home bound, while for others like a small family-run business, it may spark worry about their economic prospects.

I fully appreciate the implications of the AODA's broad-based legislative framework and I want to do it justice. I am cognizant of the pressures on the obligated sectors to make Ontario accessible. I am equally aware of the desire on the part of the disability community for this to happen as quickly as possible. But I realized early on in my review that there is no "silver bullet" – no one recommendation that can address all of the issues raised.

Since his appointment as Lieutenant Governor of Ontario in 2007, the Honourable David Onley has made accessibility the "overarching theme" of his mandate. He speaks often about the challenges faced by those with disabilities and underlines the importance of the AODA in improving their lives. One of the points that he continually raises is the need for a fundamental attitudinal shift in how accessibility is understood and perceived. He believes that it is critical to change attitudes in order to eliminate barriers. As he emphasizes, while rules and regulations are crucial, what is also required is a change of heart. His approach has informed my own thinking and recommendations.

The AODA requires transformational change and Ontario is right in the thick of the transition stage. I have been asked to determine the effectiveness of the legislation at this point in time. I have done my best to take an approach that reflects the tenets of the AODA, as my authority to undertake this review stems directly from the legislation. Having said that, the focus of this review has been on the processes developed to implement the AODA. My recommendations focus on how to improve the way the AODA is being implemented and the procedures that have been set up to develop meaningful accessibility standards.

What I have strived to accomplish is to chart a path forward to ensure the success of the AODA for people with disabilities, businesses and organizations as I believe that all Ontarians will benefit from making Ontario accessible by 2025.

Findings and Recommendations

The legislative requirement for an independent review under the AODA is an important step towards keeping Ontario's commitment to accessibility for persons with disabilities by 2025. My review is taking place at a crucial time – a time when a number of stakeholders have begun to express disenchantment with the implementation of the act, the timelines for change and the ability to realize the 2025 vision.

I believe that the findings from my review provide a solid basis for building on what has been accomplished to date in implementing the AODA. Continued progress towards achieving the 2025 vision will require action by the Ontario government to:

- Harmonize the accessibility standards before they are finalized in regulation
- Renew its commitment and strengthen its leadership on accessibility
- Build awareness and educate the public about accessibility and the AODA and
- Introduce a streamlined standards development process.

To address these objectives and move forward, I am proposing that the Government of Ontario implement the following changes:

1. Harmonize the accessibility standards prior to releasing the remaining proposed standards as regulations
2. Renew leadership for implementation of the AODA by
 - formally designating the Minister of Community and Social Services as the Minister Responsible for Accessibility
 - strengthening the Accessibility Directorate of Ontario by
 - elevating the role of the assistant deputy minister to deputy minister and
 - focusing on renewed priorities including a public awareness and education campaign to support the AODA
3. Amend the AODA to establish an arm's-length advisory body – the Ontario Accessibility Standards Board – to review and develop accessibility standards – replacing the standards development committee process.

I will also be making recommendations on the repeal of the Ontarians with Disabilities Act, 2001 and on the role of Municipal Accessibility Advisory Committees.

Together, I believe these changes will address many of the key issues raised by both the disability community and the obligated sectors during the review.

Harmonize Standards

Harmonization of the existing standards – both the customer service regulation and the four proposed standards – is an immediate priority that should be undertaken prior to releasing the remaining accessibility standards regulations. The purpose of harmonization is to ensure that the five standards are viewed holistically, making it easier to understand how they fit together and how to comply.

The five standards are intended to, collectively, move the Province closer to the 2025 goal of an accessible Ontario. However, the proposed standards were largely developed by committees working in isolation of each other. As a result, the proposed standards have overlapping content, inconsistencies, and contradictions.

— Written Brief, Toronto Transit Commission

The disability community and the obligated sectors both repeatedly expressed concerns about the lack of harmonization. The standards that have been developed cut across and intersect with one another – and with other pieces of legislation. There are many who believe that the “silo” approach of having five separate standards development committees has resulted in gaps, discrepancies and overlapping details. The review was told that the absence of coordination of requirements and timing across the standards will make it difficult to comply with the regulations and communicate expectations with respect to priorities and timeframes.

A common problem cited concerns the issue of training. Although all standards call for training, little guidance is provided on the training requirements, the training programs available or their relation to each other. Placing the onus on organizations to decipher the necessary training requirements under each standard will lead to time-consuming, costly and duplicated efforts.

Without a harmonization strategy, significant gaps in accessibility will continue to exist even when all the Standards are fully implemented... The harmonization strategy should create a framework within which the Standards are viewed comprehensively.

— Written Brief, ARCH Disability Law Centre

As this report is written, neither the content nor the timelines of four of the five standards have been released. It is my understanding that the government is working on the information and communications, transportation and employment standards, and that the built environment committee will soon be considering comments from the public review. I am also aware that while my review has been underway, stakeholders have been advising the government directly about the need to harmonize the standards before the regulations are completed.

Harmonization is consistent with the principles of the government's Open for Business initiative. It will address many of the issues raised about the need to simplify the process for complying. A harmonization strategy recognizes the fact that many organizations in Ontario in both the private and public sectors and regardless of their size must comply with several, if not all, of the five standards.

Stakeholders have raised important questions that the government should consider before releasing the final standards in regulation. I shared these concerns in a letter to the Minister of Community and Social Services dated November 18, 2009. There are many ways that the government can accomplish harmonization and I believe that this must be done prior to the standards being released.

I therefore recommend that:

The government take immediate steps to harmonize the accessibility standards prior to releasing the remaining accessibility standards as regulations.

Renewal

A driving force behind the AODA was the commitment to make Ontario a world leader in improving accessibility for people with disabilities through the development of accessibility standards. The consultations in 2004 (that led to the passage of the AODA in 2005) initiated a process that was successful in building momentum and support for the act. It is important to remember that no other jurisdiction that I am aware of has developed such a comprehensive agenda for the implementation of accessibility standards.

Implementation is now at a critical point, as the four remaining draft standards move through the approval process. A strong sense of commitment has been demonstrated and much hard work has already been accomplished by all the key players – the disability community, the government and the obligated sectors. In any review of this nature there is inevitably a focus on what has not worked and what needs to change. This is understandable and, indeed, necessary if the implementation process is to be improved and strengthened. The review, however, must also acknowledge that there have been many accomplishments since the AODA was passed in 2005.

Over the past two years the ADO has been focussed on several initiatives. First, a number of key changes have been made internally at the operational level to improve the overall administration of the Act. This has resulted in moving the development of the draft standards more quickly through the process. It has included working with the Municipal Accessibility Advisory Committees (MAACs) and determining the kind of supports that they will require going forward. With respect to the obligated sectors, new tools have been developed to assist in the implementation of the first standard of Customer Service. Extensive work has also been

undertaken internally to develop the enforcement and compliance mechanisms that will be required. In response to the many comments from the disability and obligated sectors regarding harmonization, the ADO has been working to address these concerns.

The AEBC hopes your review and Report will help to breathe new life into the process of making Ontario truly accessible for all its citizens and residents.

— Written Brief, Alliance for Equality of Blind Canadians (AEBC)

Notwithstanding the good will, sincere intentions and hard work on the part of all involved a certain sense of frustration and disappointment has been building among the many individuals and organizations that have been working to support the implementation of the AODA. Several reasons have been cited including: the current economic climate, disenchantment with the standards development committee process, ongoing uncertainties with respect to compliance requirements and timeframes, diminished focus and a relatively low level of public knowledge and engagement.

I do not believe that these sentiments are the result of a lack of commitment on the part of the minister responsible for the AODA, or the Accessibility Directorate of Ontario. Indeed, I believe that the minister and her staff as well as the ADO are engaged with the various issues that have been set out in this review and understand the need for renewed action and new approaches.

In my view the implications of implementing the AODA are far-reaching and necessitate a shift in attitudes and transformational change at a number of levels including cultural, social, political and economic. This shift can be likened to changes that have unfolded in society with respect to attitudes and actions on issues like the environment, smoking and diversity. Achieving transformational change on this scale requires more focused attention at the highest levels of government.

The ability to realize change of this magnitude is linked more to two broader realities – one internal to government and one involving our society. First, within government and perhaps similarly in other large and complex organizations, achieving change requires a focused and high level accountability structure. The degree of change required cannot occur in a “business as usual” environment. Those familiar with government processes confirm that a focused change management approach supported by strong leadership is essential to effect real change.

Second, public support for the objectives of the AODA and compliance with the standards depends on public awareness. There is no doubt that the real measure of the AODA’s success will be the reduction in barriers for persons with disabilities, but this can only be achieved by shifting attitudes among the general public to embrace and support the goals of the legislation. The government needs to develop and maintain a coordinated and integrated public awareness campaign.

These core elements – a change management strategy and an effective public awareness campaign – are essential if Ontario is to meet the goals of the AODA. With one standard in regulation, and four other standards in various stages of completion, now is the time to revitalize the implementation of the AODA. The government must breathe new life into the AODA by demonstrating a renewed commitment to its success by building momentum for change internally as well as across the obligated sectors and among the public at large. The changes proposed are intended to build on the work and progress made to date to ensure greater success in the future.

Options Considered

Before arriving at my recommendations I weighed a number of options:

- Maintain the status quo by making no substantive changes to the ADO
- Move the ADO to another ministry
- Create a separate ministry of accessibility
- Create a separate government agency responsible for accessibility.

In assessing the options, I considered the goals, objectives and obligations under the AODA, the need for renewed momentum, the potential for disruption and the risk of slowing down the implementation process, and the status of the proposed accessibility standards.

I acknowledge that any degree of change will cause some disruption and require transition time. So I first considered recommending no substantive changes to the ADO. However, at this point I believe that change is necessary.

Then I looked at moving the ADO to another ministry. Several representatives from the disability community suggested that the current ministry is not the appropriate home for the AODA implementation. Some suggested moving the portfolio back to Citizenship and Immigration or aligning it with the work of the Attorney General so it can be under the same ministry as the Ontario Human Rights Commission. However, I do not see how shifting the ADO to another ministry would address the challenges at this stage of implementation.

Next, I considered proposing a separate new ministry of accessibility. A new ministry would give the portfolio of accessibility increased visibility and stature, and would be a clear signal that accessibility is a priority for the government. There are, however, disadvantages to establishing a new ministry at this point in the implementation process. First and foremost, I would be concerned that the resources used to create a new ministry would be diverted from the important work at hand in implementing the AODA and getting the first five standards in regulation. It is also clear that while setting up a new ministry would largely involve transferring staff of the ADO, it would have cost implications and would cause considerable distraction from the priorities of the AODA. On balance, I concluded that while the stature of a separate ministry

could address some of the issues raised, what is more important at this time is to ensure continuity and stability in the implementation process.

Finally, I considered transferring all responsibilities for the AODA to a new arm's-length agency. Creating a dedicated agency responsible for implementation could resolve many of the issues raised. The agency would be accountable to the government and have a clear and focused mandate to implement all elements of the AODA.

The government has established many independent agencies to perform regulatory and other functions. In the case of the AODA, the agency would need to play multiple roles, as the AODA requires an enforcement framework in addition to such functions as standards development and review, public education, training and compliance. While there may come a point where an independent agency would be appropriate to implement the AODA, I do not believe that this is the right solution at this time. I am convinced that there is still a need for direct government direction and involvement in the implementation of the AODA. I would also be concerned that this option, like setting up a new ministry, would risk disrupting and delaying implementation.

What I am recommending instead is a practical approach that builds on what has been accomplished to date and will revitalize the implementation of the AODA. This approach would raise the profile of accessibility, increase accountability for results, and promote a focus on accessibility across the Ontario government, the obligated sectors and the public.

Minister Responsible for Accessibility

The AODA makes the Minister of Citizenship and Immigration responsible for administering the act. It also provides that this responsibility can be assigned to any member of the Executive Council (Cabinet), in accordance with the Executive Council Act. In late June 2005, responsibility for the AODA was transferred to the Minister of Community and Social Services.

The accessibility portfolio is not part of the core business of the Ministry of Community and Social Services. It may therefore not be self-evident to the public who, at the political level, is responsible for this file.

The review has found that transformative change is necessary to achieve accessibility by 2025. One of the key hurdles in meeting this goal is the low level of public awareness and understanding of accessibility and the AODA. To raise the profile of accessibility and support the transformational change needed both inside and outside government, I believe the minister's title should reflect this important role. This change would acknowledge the work being done internally by the ADO and make it clear where political responsibility for the AODA lies within the government.

I therefore recommend that:

The Minister of Community and Social Services be formally designated as Minister Responsible for Accessibility.

Strengthening the Accessibility Directorate of Ontario

The government is deep into the implementation of the AODA. The internal structures created to support this work are critical to success. Over the past two years the government has made changes regarding senior staff and direction to support implementation. I want to build on these changes and strengthen them.

Under my proposal, the roles and responsibilities of the ADO as outlined in Section 32 of the AODA would remain essentially the same. The functions pertaining to the standards development committees would move to the new Ontario Accessibility Standards Board, discussed below.

Appointment of Deputy Minister

I am recommending that the role of the assistant deputy minister for the ADO be elevated to that of deputy minister. This is a significant change from the current structure.

The recommendation must be seen in context of the stature that the office of a deputy minister carries in the provincial government. A deputy minister is accountable in different ways to the Premier, to the minister and to the Secretary of Cabinet, and has a detailed performance contract setting out priorities and expected results. Equally important is the awareness that a deputy minister has a clear mandate and authority to deliver on his or her responsibilities. Each deputy participates on key deputy ministerial committees across government. A deputy minister dedicated to accessibility would be able to ensure that the accessibility lens is brought to bear at the most senior levels of government on an ongoing basis. He or she would be in a position to lead a change management strategy to promote accessibility government-wide. A deputy focused on accessibility would be able to devote more time and attention to these tasks than it would be realistic to expect a Deputy Minister of Community and Social Services to do.

The designation of the minister and the appointment of a deputy minister would send a clear message across the public service that accessibility is a priority for the government. Together, these changes would revitalize the directorate and support its responsibility to ensure that Ontario meets the goals set out in the AODA. As well, a strengthened ADO would provide a clearer avenue for stakeholders (whether from the disability community, government or the other obligated sectors) to bring forward concerns and ideas about the implementation of the AODA as well as broader accessibility issues.

Let me add a point that relates to the Ontario government's compliance responsibilities as the largest obligated sector under the AODA. While this has not been a specific focus of my review, it has struck me that as the ADO needs renewed authority to deliver change, the government as a whole needs to send a clear signal that it is doing all it can to get its own house in order. The recent creation of the position of Assistant Deputy Minister – Accessible Public Service in the Ministry of Government Services is vital for the government to meet its obligations under the AODA. I have heard from stakeholders that this change is already having a positive impact.

Renewed Priorities

With the first five standards almost complete and the responsibility for future standards review and development moving to the proposed new board, the ADO will be able to focus on renewed priorities to move Ontario towards the goal of accessibility by 2025. In my view those priorities should include:

- public awareness and education
- a provincial policy on accessibility
- compliance and stakeholder support.

Public Awareness and Education

As I noted earlier, all stakeholders – including those representing the disability community, the government, and the other obligated sectors – are very concerned about the low level of public awareness and understanding of the AODA.

Achieving the transformational change needed to fulfil the vision for 2025 will require a, broad-based public awareness and education strategy. The benefits of accessibility should be profiled to help erode attitudinal barriers and to advocate for a philosophy of barrier prevention and a more inclusive society.

I believe it is imperative for the government to intensify its public awareness effort, particularly with respect to the new standards. The ADO should take the lead in communicating the purpose and intent of the AODA and the role of accessibility standards, to ensure successful implementation of the legislation. To date, the government has not developed a strong communications campaign to promote the AODA, its objectives, obligations and broad application.

At the political level, in addition to the minister, it is important for the Premier and senior ministers to reinforce accessibility in their speeches and communications to the public. Over time such a strategy will help build greater public awareness and understanding and reinforce the benefits and value of achieving accessibility by 2025.

Provincial Policy

One key element that has been missing to date in implementing the AODA is an overarching provincial policy framework for accessibility that reflects the public interest. Developing such a policy should be a further priority for the ADO. This framework should provide:

- Greater clarity on goals and expectations supporting the vision for an accessible Ontario by 2025 (i.e., what does an accessible Ontario in 2025 really look like?)
- A set of core principles to inform the ongoing standards development and review process and to evaluate the effectiveness of the AODA
- A focus on the economic impact of the AODA and
- Criteria for the development of additional standards.

Compliance and Stakeholder Support

In addition, the ADO should implement a strategy to facilitate and encourage partnerships to support the obligated sectors in working to meet the 2025 goal set by the legislation. This would include:

- Development of effective and timely tools and supports for the obligated sectors to facilitate compliance with standards
- Exploration of policy options and a variety of incentives (including tax credits and other tax policies) to support the transformational change needed to fully embrace and achieve the goals of the AODA³³
- Development, communication and implementation of a compliance and enforcement framework
- Ongoing consultations with the disability community and obligated sectors about the implementation of the AODA.

The review heard many suggestions for changes that could be introduced at the practical level to assist the obligated sectors and the disability community as well. For example, it is currently a challenge for anyone searching for information on the AODA or the ADO to find what they are looking for on the Internet. The ADO is listed as a program on the ministry's home page, but it takes several additional steps to get up-to-date information on what is happening. In fact, during the review I heard many concerns that people were unable to locate the necessary information about the consultations. I recognize the ministry has launched the AccessON site as part of its strategy to provide information and support to the disability community and to better inform the public on accessibility and the AODA. This is an important step forward but more needs to be done.

³³ This is consistent with the AODA, Part IX, Section 33 (1) (2) (3) that addresses the minister's authority to enter into incentive agreements providing exemptions and other benefits to encourage obligated organizations to exceed the requirements in accessibility standards.

The AODA should be given much more visibility on the government's central website. There should be a direct link to the ADO like the one for the Office of Francophone Affairs. While this might seem obvious, it is another example of how accessibility needs to be front and centre, especially in light of the increased use of the Internet. The government should make full use of accessible formats in its communications. This is required under the ODA, but the review was told that it does not always happen.

Support for stakeholders is not a job for government alone. The various provincewide associations and organizations in the public, private and not-for-profit sectors also have a role. Many have already been involved with the ADO and the standards development process. In fact, a number have participated in the EnAbling Change program that I have referred to earlier.

I believe that the EnAbling Change program should be enhanced and that the ADO should continue to work closely with these provincial groups to include accessibility issues in their annual conference programs and from time to time to develop specific meetings or roundtables on the progress of the AODA. These provincial bodies can serve a very important purpose in expanding awareness and understanding of the AODA on the part of their members.

I therefore recommend that:

The government, led by the Minister Responsible for Accessibility, strengthen the Accessibility Directorate of Ontario by:

- elevating the role of the assistant deputy minister to deputy minister to provide stronger leadership and accountability for the implementation of the AODA and
- focusing the ADO on renewed priorities including a public awareness and education campaign to support the AODA.

Establish the Ontario Accessibility Standards Board

It is clear that changes to the standards development process are needed. This is the opportune time to reflect on the strengths and challenges of the process that was undertaken to develop the standards and determine what is necessary to achieve the goals of the legislation going forward.

Strengths of the Standards Development Process

The cornerstone of the AODA legislation is the development of accessibility standards through an inclusive stakeholder process. It is widely appreciated that the AODA process of creating standards through committees involving the disability community, the obligated sectors and representatives of government was innovative and groundbreaking. Countless hours and untold

effort were expended by the many individuals involved in developing standards. They worked to the best of their abilities to fulfil the promise of the legislation. An inclusive process is a unique and positive feature that has been endorsed as important and necessary by most stakeholders.

The task of the Independent Reviewer is to impress upon the government of Ontario the value of the work that has been done, but at the same time to propose ways in which the value of that work can be enhanced, both in itself and in the eyes of those who behold it from all sides.

— Written Brief, Community Living Association of Ontario

Challenges

The process, as implemented, was well intended but proved to be challenging as a result of a number of factors. Specifically:

- **The complexity of much of the subject matter in terms of its technical nature.**

A lack of sufficient access to technical expertise and the lack of knowledge of best practices led some to believe that the proposed standards were ill-defined. Many of those involved in the process believe that the make-up of the committees did not adequately reflect the knowledge and expertise required to develop workable standards.

- **The absence of central coordination, direction and an underlying public policy framework supporting the standards initiative.** There was no overarching coordination across the standards committees and no centralized clearinghouse to vet standards, align timelines and harmonize the provisions. The parallel processes resulted in a disconnect between each set of requirements and made it difficult to determine gaps, overlaps, discrepancies, priorities, costs and training requirements.

Good public policy has taken a back seat to timetables. We recommend that no other standards be passed into regulations until the issues identified are addressed and reconciled. The absence of a good and thorough policy approach to the standard development process will undermine everyone's efforts to achieving accessibility.

— Written Brief, Association of Municipalities of Ontario

- **Disagreement about the timelines for developing the proposed standards.**

The length of time it took to complete the standards was the source of significant friction among committee members. Some believed that the process did not move quickly enough and that the standards took too long to develop. Others felt that the timelines were too aggressive and that more time was needed to consult with the obligated sectors to clarify the costs and impacts of various options.

- **Disagreement about the timeframes for achieving accessibility contained in the proposed standards.** Another cause of friction was the push by some disability representatives for many of the proposed requirements to take effect over a much shorter period than the 20 year timeline in the legislation. The tighter deadlines led to increased worries about costs.
- **Lack of information about compliance and enforcement mechanisms.** The government has not announced the compliance and enforcement framework for the AODA. Many felt that this contributed to an atmosphere of confusion and uncertainty during the standards development process.
- **The lack of credible and comprehensive cost/benefit analyses to assess the separate and cumulative impact of the standards.** Uncertainty with respect to costs, feasibility and the cumulative impact of the standards was a major concern raised by a number of stakeholders.

The challenges noted above were intensified by the changes that were introduced to the standards development process in late 2007, specifically:

- A change in the composition of the standards development committees with 50 per cent of members to be persons with disabilities or representatives of the disability community
- A change in the role of government waiving the right of ministries' representatives on the committees to vote.

These measures created a number of unintended results. They led to confusion about committee processes (including voting and decision-making practices), contributed to delays and increased the size of the committees (in some cases close to 50 members). With the loss of a voting role, the government members became little more than observers. The timing of the changes worsened the problems as some committees were well into their work when the structure and membership were altered. For example, the changes came after one committee had already released its proposed standard for public review.

Collectively, the changes caused much frustration and stirred up emotions among some participants. This significantly altered the dynamics of the process, moving it from an atmosphere of consensus-building to one of negotiation, creating, in some cases, an "us versus them" dynamic.

While it is important to acknowledge these shortcomings, I believe that we are now at a point when the discussion needs to shift and move forward.

Opportunities

Virtually everyone consulted about the standards development committee process identified areas for improvement. Although there was not agreement on every issue, there was overall consensus that the process would have benefited from:

- A clearer governance and accountability framework articulated at the outset – including unambiguous terms of reference, transparent voting procedures and well-defined roles for the different players (e.g., chair, consultants, ADO, ministry representatives)
- Clarity on the role of government and the public interest in the decision-making model
- Explicit provincial public policy and principles to guide the standards development committee process
- More careful consideration of the composition of the committees to support a balance of perspectives reflecting the governance model, terms of reference and expertise required
- Credible background documents to support the process drawing on research about evidence-based and best practices in Ontario and other jurisdictions
- Engagement of appropriate technical and sectoral expertise (i.e., technical resource and sector subcommittees) to support the committees in their deliberations
- More transparent timelines for the development of the standards and ongoing assessment of the feasibility of timelines and
- Establishment of a formal orientation and training program for committee members.

Moving Forward

At the outset let me reiterate that the process under the AODA was new, innovative and groundbreaking. It was to be expected that there would be challenges. However, in my opinion tinkering with the current process will not be enough. Nor do I believe we can return to the traditional government regulation-making process, which may or may not involve consultations. A number of fundamental changes are needed, including replacing the standards development committees. However, any new approach to standards development must continue to respect the spirit and intent of the AODA.

I have reached the conclusion that an arm's-length advisory body with ongoing responsibilities is required to bring greater focus, experience and expertise to the standards development process. What is needed going forward is focused, continuing attention by a dedicated group that can build the expertise required to review and develop credible accessibility standards.

Amendments to the AODA will be required as I do not believe these changes can be accomplished under the current framework in the legislation.

Governance Model

Determining the governance model for the Ontario Accessibility Standards Board has been a particular challenge. In fact, many of the issues raised in the consultations on the standards development committee process related to governance questions. I have strived to respect the principle of inclusiveness in the AODA, while addressing the key issues that were raised about the current process.

I began with a review of the language in section 1, the purpose clause, of the AODA. Recognizing the history of discrimination against persons with disabilities in Ontario, the clause:

- sets the goal for an accessible Ontario by 2025 through the development and implementation of accessibility standards and
- requires the involvement of persons with disabilities, the government of Ontario and of representatives of industries and of various sectors of the economy in the development of those standards.

I have concluded that for the standards development process to be effective going forward, the best approach is to ensure the inclusion of all the key players (the disability community, the provincial government and the other obligated sectors) from the beginning.

The board members should be experienced individuals, able to bring the views of their sectors to the table but also practised in consensus-building. I see the board process first and foremost as a collaborative one. The chair should be a high-profile individual with standing and credibility in the province who is highly skilled in facilitation and has experience working with boards in complex environments.

Membership on the board would consist of 15 members, including the chair, who would be non-voting. Persons with disabilities or their representatives would have seven members (50 per cent representation) on the board, consistent with the government's commitments made in 2007 for the standards development committees. The obligated sectors (broader public, private and not-for-profit) would be represented by six senior and experienced individuals knowledgeable about their own sectors and versed in government structures and processes. The provincial government would be represented on the board by a senior public servant. Various ministries would be involved through sectoral and technical committees.

I appreciate that the proposed membership may at times introduce tension in the board's decision-making process. I believe, however, that with an experienced chair and the commitment of board members to the goals of the AODA, this model can work.

The following outlines the purpose, mandate, and roles and responsibilities of the new board.

Purpose: To review and develop accessibility standards under the AODA and provide recommendations to the Minister Responsible for Accessibility.

Mandate: To build expertise on accessibility standards development; conduct research and monitor national and international accessibility developments; conduct five-year reviews of accessibility standards as mandated by the AODA; advise the Minister Responsible for Accessibility on the need for new standards; and, on the direction of the minister, develop and harmonize proposed new standards and integrate them with other relevant legislation and government policy.

Roles and Responsibilities: Similar to those outlined for the standards development committees in Part III (Accessibility Standards) of the AODA, with necessary modifications.

Details on the roles and responsibilities of the new board would be articulated in proposed amendments to the AODA and in a memorandum of understanding between the board and the Minister Responsible for Accessibility and the ADO. These would include:

- Review and revise accessibility standards in accordance with the AODA through an inclusive process, and submit proposed standards to the government for consideration as regulations
- Advise the minister on the need to develop new standards
- At the direction of the minister, develop new standards through an inclusive process, and submit proposed standards to the government for consideration as regulations
- Support the ADO in the preparation of guidelines and other reference materials and in promoting partnerships to share knowledge and best practices, to further the implementation of the standards
- Develop a transparent and inclusive public consultation process, involving persons with disabilities, to support the review of both existing and proposed new standards
- Establish appropriate technical and sectoral committees for the review and development of standards through a process of subcommittees reporting to the board, and establish procedures to guide the subcommittees
- Ensure harmonization of the standards
- Build expertise on the development and review of accessibility standards.

Structure of Board

Composition

The composition of the board would consist of:

- the chair (non-voting)
- seven representatives from among persons with disabilities or their representatives
- six representatives from the obligated sectors and
- one provincial government representative (a senior public servant).

Selection and Appointment of Members

The chair and members would be appointed by the government through Order-in-Council. The government should develop selection criteria and recruitment strategies in consultation with stakeholders.

Board Secretariat

The board would be supported by an executive director and a small, dedicated staff. Consideration should be given to transferring employees from the ADO to ensure continuity. At the direction of the board, the executive director would be responsible for operational activities, budget allocations, stakeholder engagement and liaising with the ADO. Part of the role of the secretariat would be to ensure that the board members from the disability community receive appropriate support.

Committees

The board would be required to establish technical and sectoral committees to support the review of existing standards and development of new standards. I see the role of these committees as critical in advising the board on the content and form of the standards. The work of the committees must be transparent and accessible to the public and include input from the board's consultation process.

The board would need to establish a process for the committees including mandates, criteria for membership and the term of appointments.

Accountability and Reporting

The board would be accountable to the minister and report to the minister on a regular basis. The board would be required to submit an annual report to the minister.

Timeframe for Creating Board

The first standard on customer service came into force on January 1, 2010 for the provincial government and the broader public sector. The government is now completing its review of three of the remaining four standards (information and communication, employment, and transportation) and I expect it to be preparing regulations for each. The built environment standard is still in the committee stage. As I have recommended above, it is imperative for the government to ensure that all five standards are fully harmonized. Once the five accessibility standards have become law and the AODA moves to the next phase of implementation, the new Ontario Accessibility Standards Board should commence its work.

I therefore recommend that:

The AODA be amended to establish an arm's-length advisory body – the Ontario Accessibility Standards Board – to review and develop accessibility standards – replacing the standards development committee process.

Interim Recommendations to Begin Transition

Because the recommendation for a new board would require amendments to the AODA, it may take some time for the changes to take effect and the board to be established. I am therefore recommending the appointment of a director under the existing legislative framework to achieve some necessary interim steps. The director could be provided with sufficient authority to enable him or her to start the process of establishing the new board, until the proposed amendments to the AODA are considered by the legislature.

Next Legislative Review

Under section 41 of the AODA, the next legislative review is scheduled to begin three years after the tabling of my report in the legislature. If the government accepts the recommendation to establish a new board, this timeframe will likely be too short for a meaningful evaluation. Even if the transitional suggestion above is followed, it will take some months after the passage of legislation for the new board to complete the start-up period and hit full stride. Therefore I believe that consideration should be given to deferring the next review for at least an additional year.

Role of Accessibility Standards Advisory Council

As noted above, the AODA created the Accessibility Standards Advisory Council to represent the disability community and to advise the minister on the progress being made by standards development committees, public information programs and other matters. Under the act, the council undertakes activities as directed by the minister.

The proposal to establish a permanent accessibility board will have an impact on the council's role with respect to standards development, as set out in the AODA. The role of the council will therefore need to be reviewed in the context of these changes.

A Repeal Strategy for the Ontarians with Disabilities Act, 2001

As discussed earlier, as part of my mandate I was also asked to make recommendations for a strategy to repeal the Ontarians with Disabilities Act, 2001. Background information on this theme appears in the Introduction and input from the consultation process was summarized in the What the Review Heard section.

A number of questions need to be considered in developing a strategy to repeal the ODA, including:

- Should the ODA be repealed in whole or in part?
- When should the ODA be repealed?
- What is the impact of repealing the ODA? What gaps, if any, would result?

- Should certain sections of the ODA be carried forward into the AODA? If so, should those sections apply to the public and broader public sector as under the ODA or should they be extended to apply to the not-for-profit and the private sectors?
- Is there a need for a transition plan to minimize duplication and confusion among the public, the disability community and the obligated sectors until the ODA is repealed?

As of January 2010, the provincial government and the broader public sector are subject to requirements under both the ODA – including the ongoing requirement for annual accessibility plans – and the AODA – for compliance with and reporting on the customer service standard.

The AODA represents a more comprehensive legislative and regulatory framework than the ODA. There are several features that differentiate the two acts. The AODA:

- applies to all Ontarians – that is, all persons or organizations in the public, private and not-for-profit sectors
- calls for the development of accessibility standards with respect to goods, services, facilities, accommodation, employment, buildings, structures and premises
- requires the participation of persons with disabilities as well as stakeholders from the obligated organizations in both the public and private sectors in the development of the accessibility standards
- contains measures for compliance, reporting, inspections and enforcement.

Certain specific obligations on the provincial government and the broader public sector are not explicitly continued in the AODA. It is anticipated that many of these requirements under the ODA will be covered in standards developed under the AODA. However, until the standards are finalized and released it is not clear what gaps, if any, will need to be addressed.

The AODA does carry over the requirement for municipal accessibility advisory committees (in municipalities with a population of 10,000 or more) from the ODA. The role of the MAACs under the AODA will be specifically addressed in the section on MAACs a bit further on in this report.

The following chart summarizes and compares some of the key requirements under both acts. It highlights the possible gaps that could result if the ODA is repealed before the accessibility standards are finalized and in place.

Comparison of Legislative Requirements	
ODA	AODA
Purpose	
Section 1 To improve opportunities for persons with disabilities and to provide for their involvement in the identification, removal and prevention of barriers to their full participation in the life of the province Barrier: anything that prevents a person with a disability from fully participating in all aspects of society because of his or her disability, including a physical barrier, an architectural barrier, an information or communications barrier, an attitudinal barrier, a technological barrier, a policy or a practice	Section 1 Recognizing the history of discrimination against persons with disabilities in Ontario, the purpose of this Act is to benefit all Ontarians by, (a) developing, implementing and enforcing accessibility standards in order to achieve accessibility for Ontarians with disabilities with respect to goods, services, facilities, accommodation, employment, buildings, structures and premises on or before January 1, 2025; and (b) providing for the involvement of persons with disabilities, of the Government of Ontario and of representatives of industries and of various sectors of the economy in the development of the accessibility standards.
Requirements	
Annual Accessibility Plans	Accessibility Standards
Annual Accessibility Plans — Sections 10,11, 14,15, 17 & 18 - Broad in scope and include measures taken in the past year and planned for the upcoming year, to identify, remove and prevent barriers to persons with disabilities - Government of Ontario guidelines for plans - Ministries shall consult with the Accessibility Directorate of Ontario in preparing the plan - Municipalities and other public sector organizations: - Municipalities to seek advice from their accessibility advisory committee or, where no MAAC exists, consult with persons with disabilities and others - Other organizations to consult with persons with disabilities and others - Two or more ministries, municipalities or organizations may prepare joint accessibility plans - All accessibility plans made available to the public	Accessibility Standards — Sections 6-12 - Standard shall name or describe persons or organizations to which it applies - May apply to persons or organizations that provide goods, services or facilities; are employers; offer accommodation; own or occupy a building, structure or premises; or are engaged in any other prescribed activity Content - Sets out measures, policies, practices or other requirements for the identification and removal of barriers with respect to goods, services, facilities, accommodation, employment, buildings, structures, premises or such other things as may be prescribed, and for the prevention of the erection of such barriers, and requires implementation within specified time periods Standards Development Committees (SDCs) Sections 8-9 - SDCs to develop standards to be considered for adoption by regulation - Minister to consult with relevant ministers before establishing SDCs and invite representatives of various groups to be members of the committees

- Proposed standards to be made public for public comment
- Compliance Reporting – Sections 13-17**
- Annual compliance reporting required from person or organization to which a standard applies
 - Must be available to public

Ministry Obligations

Section 4 – Government Buildings, Structures and Premises

- Develop barrier free design guidelines and ensure compliance with these guidelines
- Maintain a level of accessibility that meets or exceeds the Building Code Act, 1992

- Accessibility requirements for government buildings, structures and premises may be addressed in the built environment standard

Section 5 – Government Goods and Services

- Have regard to accessibility when purchasing goods or services

- Government procurement is not directly addressed in AODA

Section 6 – Government Internet Sites

- Provide ministry Internet sites in a format that is accessible to persons with disabilities, unless it is not technically feasible to do so

- Accessibility requirements for government Internet sites may be in the information and communications standard

Section 7 – Government Publications

- Provide Ontario government publications in an accessible format within a reasonable timeframe when requested, unless it is not technically feasible to do so

- Any document required by the act to be in writing must be provided in an accessible format upon request (s.35)
- Other publications may be addressed in the information and communications standard

Section 8 – Government Employees

- Accommodate the accessibility needs of Government employees in accordance with the Human Rights Code to the extent that the needs relate to their employment
- Accommodate the accessibility needs of persons with disabilities applying for employment
- Ensure that government managers and supervisors are trained in fulfilling their obligations under the employment provisions
- Inform employees of their rights and obligations under the employment provisions
- The Management Board Secretariat is required to reimburse a ministry for eligible expenses incurred in accommodating persons with disabilities

- Nothing in the AODA diminishes legal obligations with respect to persons with disabilities that are imposed by other Acts or laws
- Government employee requirements may be addressed in the employment standard

Section 9 – Government Funded Capital Programs • Funded projects must meet or exceed the level of accessibility established by the Building Code in order to be eligible for government funding • Accessibility requirements may also be a condition for funding for projects that do not fall under the Building Code	• Minister may enter into agreements with anyone required to comply with a standard to provide incentives to exceed one or more of the requirements in a standard in relation to goods, services and facilities, accommodation, employment and buildings, structures and premises (s. 33)
Municipal Obligations	
Accessibility Advisory Committees (MAAC) – Section 12 • If population of 10,000 or more, required to have an Accessibility Advisory Committee with majority of members persons with disabilities (municipalities of less than 10,000 may establish a MAAC) • MAAC to advise council on preparation, implementation and effectiveness of accessibility plan • Council to consult MAAC on issues of built environment accessibility • Council to supply MAAC with any requested site plans or drawings for MAAC to review in a timely manner • Two or more municipalities may establish a joint MAAC (s.17(3))	Accessibility Advisory Committees – Section 29 • If population of 10,000 or more, required to have an Accessibility Advisory Committee with majority of members persons with disabilities (municipalities of less than 10,000 may establish a MAAC) • MAAC to advise council about the requirements and implementation of accessibility standards and preparation of accessibility reports • Council to consult MAAC on issues of built environment accessibility • Council to supply MAAC with any requested site plans or drawings for the MAAC to review in a timely manner • Two or more municipalities may establish a joint MAAC
Municipal Goods and Services – Section 13 • Have regard for persons with disabilities in deciding to purchase goods or services through the procurement process for the use of itself, its employees or the public	• Municipal procurement not directly addressed in the AODA

Considerations

I am persuaded that the ODA has contributed to raising the level of awareness about accessibility issues in the provincial government and the broader public sector and in local communities across Ontario. The legislation has helped to move the yardsticks in making Ontario more accessible to persons with disabilities.

In particular, annual accessibility planning and municipal accessibility advisory committees have helped to increase awareness of issues facing people with disabilities and the need to plan to

identify and remove barriers. Accessibility planning has become an important element of overall business planning for the provincial government and the broader public sector. MAACs provide the disability community with a formal voice and a role in accessibility planning at the municipal level.

The government and broader public sector appreciate the value of accessibility planning, but are extremely concerned about overlapping reporting processes under the two separate acts. It was suggested by many, including the government representatives, that the planning and reporting functions under the ODA be refocused on compliance with the five accessibility standards under the AODA.

The disability community sees the ODA as symbolic. Giving the disability community a voice through membership on MAACs was an important step in breaking down the attitudinal barriers faced by people with disabilities. They want to ensure that no gains are lost by repealing the ODA, or by repealing it prematurely. Since only one accessibility standard (customer service) is in regulation, some in the disability community urged me not to recommend the repeal of the ODA until the standards are complete, and any gaps compared to the ODA can be addressed. Others suggested that the ODA should not be repealed until 2025.

I am convinced that it is sound public policy ultimately to have only one piece of accessibility legislation in Ontario to identify, prevent and remove barriers for persons with disabilities. Nonetheless, I believe that it would be premature to repeal the ODA until the remaining four accessibility standards are finalized and in place and the questions and issues that have been raised are resolved. In fact, when the AODA was enacted, the government indicated that it intended to keep the provisions of the ODA in force until they are replaced by standards under the new act.

It is true that keeping two acts, in the short term, may perpetuate some confusion for the public, the disability community and the obligated sectors. It may also continue obligations for the government and broader public sector that may no longer be relevant in light of the accessibility standards. Maintaining the two acts may also put further pressure on already stretched obligated organizations at a time when they are trying to build their capacity to comply with the AODA. I have tried to balance these concerns in my proposed approach.

A Proposed Strategy for Repeal

The ODA was not repealed when the AODA took effect. Instead, section 42 of the AODA provides for the repeal of the ODA either in whole or in stages, by proclamation. In light of what I heard about the value of the ODA, I am concerned that repealing the act prematurely would send the wrong message.

I am therefore recommending the following strategy for the government to repeal the ODA. The approach provides a set of principles to guide the government on how and when to repeal the 2001 act. It tries to balance the concerns raised about duplication on the one hand, and ensuring that unintentional gaps are not created, on the other.

1. Repeal the ODA after the five accessibility standards are in place

- The government should repeal the ODA only after the five standards are in regulation and it can be determined what, if any, of the remaining obligations under the ODA should be incorporated into the AODA.
- When the government repeals the ODA, it should be repealed in its entirety (subject to the requirements that are incorporated into the AODA) and not in stages. This approach would make requirements clearer and easier to follow for the obligated sectors.
- In determining which provisions of the ODA should be carried into the AODA, with necessary modifications, the government should consider:
 - Is the requirement sufficiently addressed in one of the five accessibility standards?
 - Is the requirement redundant under the AODA legislative and regulatory framework?
 - Does the obligation support compliance with the AODA standards?
 - With respect to the specific requirements on the government of Ontario, do the obligations support the goal of an accessible Ontario by 2025?
- In repealing the ODA, the government should consider its Open for Business policy to avoid creating any additional confusion among the public or any unnecessary regulatory burden on the obligated sectors.

2. Accessibility Planning

This issue requires careful consideration. On the one hand, it appears that the planning requirements under the ODA have been valuable. They have contributed to removing barriers within local communities and have provided a voice for the disability community. On the other hand, now that the AODA is establishing accessibility standards, it may be that the role of planning for barrier removal needs to be more focused on compliance with standards.

I am therefore recommending that in reviewing the gaps under the ODA once the five standards are in place, the government should consider moving the planning requirement under the ODA into the AODA, with necessary modifications. Based on the feedback from my consultations, I would suggest that the government consider the following modifications to the planning obligations so that they reflect the new accessibility standards framework under the AODA:

- Change the focus of the accessibility plans to compliance with accessibility standards within the timelines set out

- Change the annual requirement to a four year planning cycle – this would better reflect the timelines in the standards as well as the municipal election cycle
- Streamline the requirement to make the accessibility plans public with the compliance reporting requirements under the AODA to avoid duplication and minimize the administrative burden and
- Consult with stakeholders to determine to whom the planning requirements should apply and what the nature of those requirements should be.

3. ODA Requirements on Provincial Ministries

The ODA sets out specific obligations for provincial ministries that may not be captured by the AODA standards. I therefore recommend that in its gap analysis the government carefully review sections 4 to 9 of the ODA to ensure that these specific requirements are sufficiently incorporated in the standards. Based on that analysis, consideration should be given to amending the AODA to include any provisions omitted.

4. Transition

As noted earlier, there is concern about the administrative burden and overlapping requirements imposed on the obligated sectors while both the ODA and the AODA remain in place.

I therefore strongly recommend that until it is appropriate to repeal the ODA, the government implement a guideline to create a streamlined process for the preparation and public release of accessibility plans under the ODA and for compliance reporting under the AODA. It was clear throughout the consultations that, if both requirements remain, the process for planning and compliance reporting should be integrated and streamlined to reduce the burden on the obligated sectors and ensure the continued focus of effort and resources on compliance with the new standards.

In summary, I recommend the following strategy for the government to repeal the ODA:

- Repeal the ODA once all of the accessibility standards are in regulation; repeal the ODA as a whole and not in stages
- Undertake an assessment to determine which, if any, provisions of the ODA are not covered by the AODA legislative and regulatory framework and therefore may need to be incorporated, including the requirements on the provincial government
- After consultations, incorporate the planning framework under the ODA into the AODA, with necessary modifications
- Implement a transitional guideline to integrate and streamline the planning requirements under the ODA and the reporting requirements under the AODA and
- Preserve the consequential amendments made by the ODA to other legislation, if necessary.

Role of Municipal Accessibility Advisory Committees

The terms of reference also directed me to examine the role of Municipal Accessibility Advisory Committees (MAACs). Background information on MAACs was presented in the Introduction and input from the consultation process was summarized in the What the Review Heard section.

Throughout the review I met with a broad range of municipalities and many members of MAACs from large urban municipalities, regional governments, and northern and rural communities across the province. I also met with representatives from the Association of Municipalities of Ontario (AMO) and from the Association of Municipal Clerks and Treasurers (AMCTO).

In discussions with representatives from MAACs and municipalities it was evident that MAACs have evolved differently and are at various stages of maturation and effectiveness. Municipalities that have made progress in improving accessibility tend to have more experienced MAACs. This seems to be the result of a combination of commitment and leadership from the municipality at the council and mayoral levels, as well as strong MAAC members.

The Strength and Potential of MAACs

I was struck by the number of examples of best practices from municipalities and MAACs that were cited throughout the consultations. There does not, however, appear to be any formal process for documenting or making these examples available to other municipalities. In fact, the consultations for the review provided an opportunity for representatives from various municipalities and MAACs to come together to discuss how they were approaching the new responsibilities under the AODA, as well as innovative ideas their communities had developed and the challenges they were facing.

Municipalities ranging in size from large urban to small rural provided examples of innovative and comprehensive accessibility plans. I was told of one interesting initiative from the City of Thunder Bay. Twice a year the MAAC brings together representatives from the local hospitals, colleges and universities to share opportunities, best practices and challenges with respect to the broader public sector's responsibilities under the ODA and the AODA.

Now that the private and not-for-profit sectors are also covered by accessibility requirements, informal local collaborative structures can support them in meeting their new obligations. I see tremendous strength and potential for MAACs to effect change at the community level and to support the work of the more informal advisory committees set up by many hospitals, colleges, universities and school boards, and over time the efforts of the private and not for profit sectors. In particular, the MAACs can serve as an excellent resource for the chambers of commerce in their communities. I see this as a key factor in supporting the province to meet its 2025 goal for accessibility, as the provincial government alone cannot effect the level of change required.

Input from Consultations

The key messages from the consultations on the role of MAACs can be summarized as follows:

- There is value in having municipal accessibility advisory committees. They are an important part of the process to improve accessibility and achieve the AODA vision for 2025 at the local and community level.
- It is necessary to clarify the role of MAACs with respect to their responsibilities under the ODA and AODA in the context of the ODA repeal strategy.
- Training is needed for municipal staff, MAAC members and future members about their respective roles, municipal governance principles and the AODA framework of accessibility standards and compliance.
- There is a need for formal and informal networks to share best practices among MAACs and municipalities.
- The ADO should play an ongoing role in training and educating MAACs and municipalities about their responsibilities under the AODA.

Next Steps

I am convinced that the MAACs do, and should continue to, play an important role in improving accessibility at the community level and in implementing the AODA. I see the role of the MAACs as a continuing work in progress as they build their capacity and gain expertise across the province.

Overall, I did not hear of any major concerns or gaps that require changes at this time with respect to role of the MAACs. As noted, MAACs do need better support so that they can fulfil their responsibilities under the ODA and the AODA and help Ontario achieve the goal of accessibility by 2025.

The role of the MAACs must be considered in the context of the proposed ODA repeal strategy outlined above. It is important that the process for preparing and releasing accessibility plans under the ODA and compliance reports under the AODA be streamlined and merged to avoid duplication. This is essential to ensure that the efforts and resources of the MAACs are focused on implementation and compliance with the new accessibility standards.

I have found a strong need for a mechanism for MAACs and municipalities to share best practices in a structured way. This would help MAACs to continue to evolve so that they can support further improvement in accessibility under the AODA. In spring 2009 the ADO brought together members of a number of MAACs in a series of regional forums planned in cooperation with MAAC chairs. These events were very positively received and provided a useful way for members of MAACs to share best practices and approaches to enhancing accessibility in their

communities. Another idea suggested was to develop an online repository of municipal and MAAC success stories that would be easy to access province wide.

I believe that AMO and AMCTO can also play an important role in this regard through their annual meetings and the various conferences and roundtables they sponsor. The ADO should work closely with both organizations on all of its local government accessibility initiatives.

In light of what I heard throughout the consultations, and on the basis of the proposed repeal strategy for the ODA,

I recommend that:

- The MAACs continue as advisory bodies to municipalities
- Municipalities ensure that their accessibility advisory committees are appropriately utilized and seen as important resources in making communities more accessible
- In cooperation with stakeholders, the ADO continue to develop timely, regional forums to support MAACs and municipalities in carrying out their responsibilities under the AODA
- The ADO develop mechanisms for the sharing of best practices, in cooperation with stakeholders and
- MAACs play a role in bringing together other advisory and informal organizations in their communities that are assisting the obligated sectors to comply with the AODA.

Additional Standards

In my terms of reference, I was asked to consider whether any additional standards should be developed. At this time, it is my view that the government should focus its energies on completing the development and harmonization of the first five standards. Once this is done, the minister should determine if further standards are required, with the advice of the proposed Ontario Accessibility Standards Board.

Conclusion

The recommendations in this report are designed to build momentum and ensure a successful transformation to an accessible Ontario by 2025.

Designating a Minister Responsible for Accessibility and appointing a deputy minister to support this portfolio will underline that accessibility is a priority within the government and for Ontario society as a whole. A dynamic public awareness campaign will foster increased understanding of the barriers facing people with disabilities and how to remove them. New partnerships to develop learning materials and training programs will give obligated organizations the tools to comply with standards. Together, these proposed changes add up to stronger leadership towards an accessible Ontario.

Under my proposals, the Ontario Accessibility Standards Board will assume ongoing responsibility for reviewing and developing standards, thereby replacing the standards development committee process. True to the inclusive spirit of the AODA, the board will draw members from persons with disabilities and their representatives, government and the obligated sectors. It will be able to call on technical specialists as needed to develop credible standards. Over time, the board will develop experience and expertise that will place Ontario in the front ranks of accessibility standards development worldwide.

Now that the Parliament of Canada is in the process of ratifying the United Nations Convention on the Rights of Persons with Disabilities, the time is right to make accessibility a national priority. As the fifth anniversary of the AODA approaches, Ontario has learned many lessons that could be shared with our partners across the country.

I recognize we still have a way to go to make Ontario accessible and a place where everyone can participate and contribute to their full potential. Such a society will benefit us all. I am hopeful my recommendations will assist Ontario to meet the worthy goals and objectives of the Accessibility for Ontarians with Disabilities Act by 2025.

Appendix

List of Submissions

Accessibility Experts	Kingston Municipal Accessibility Advisory Committee
Alliance for Equality of Blind Canadians	Lake of the Woods District Hospital
Accessibility Consultants Association of Ontario	Lakehead University
Accessibility for Ontarians with Disabilities Act Alliance	Learning Disabilities Association of Ontario
Anglican Church of Canada	Learning Disabilities Association of Sudbury
ARCH Disability Law Centre	Lennis Trotter Architect
Association of Municipalities of Ontario	Lockerby Transportation
Association Franco-Ontarienne des conseils scolaires catholiques	London Transit Commission
Autism Resolution Ontario	Le Phénix au delà du handicap
Beyond Ability International	March of Dimes
Canadian Federation of Independent Business	Nipissing Association for Disabled Youth
Canadian Mental Health Association	ODSP Action Coalition
Canadian Life and Health Insurance Association Inc.	Ontario and Toronto Automobile Dealers Association
Canadian Hearing Society	Ontario Community Support Association
Canadian Taxi Cab Association	Ontario Home Builders' Association
City of Guelph	Ontario Hospital Association
Community Living Ontario	Ontario Human Rights Commission
Durham College	Ontario Public Transit Industry (Canadian Urban Transit Association and the Ontario Public Transit Association)
Fort Erie Accessibility Advisory Committee	Ontario Real Estate Association
Fanshawe College	Ontario Society of Occupational Therapists
Georgian College	Ottawa Accessibility Advisory Committee
Grand River Accessibility Advisory Committee	Pickering Accessibility Advisory Committee
Greater Grand Sudbury	PUSH Northwest
HAGI Community Services	Table provinciale francophone pour la personne handicapée
	The County of Wellington

The Corporation of the City of London
The Law Society of Upper Canada
The Motion Picture Theatre Association
The New Vision Advocates - Community
Living London
The National Broadcast Reading Service
The Ottawa Hospital
The Region of Waterloo
Toronto Transit Commission
Sarnia Accessibility Advisory Committee
United Counties of Leeds and Grenville

